

TABLE OF CIVIL RULES

<u>RULE #</u>	<u>PAGE</u>
DUCivR 1-1	AVAILABILITY AND AMENDMENTS <u>1</u>
(a)	<u>Availability</u> <u>1</u>
(b)	<u>Amendments to the Rules</u> <u>1</u>
DUCivR 1-2	SANCTIONS FOR CIVIL RULE VIOLATIONS <u>1</u>
DUCivR 3-1	CLERK'S SCHEDULE OF MISCELLANEOUS FEES <u>2</u>
DUCivR 3-2	ACTIONS TO PROCEED WITHOUT PREPAYMENT OF FEES <u>2</u>
(a)	<u>Non-incarcerated Parties</u> <u>2</u>
DUCivR 3-3	COMMENCEMENT OF AN ACTION: NOTIFICATION OF MULTI-DISTRICT LITIGATION <u>4</u>
DUCivR 3-4	CIVIL COVER SHEET <u>4</u>
DUCivR 4-1	SERVICE OF PROCESS <u>5</u>
DUCivR 5-1	FILING OF PAPERS <u>6</u>
(a)	<u>Electronic Filing Permitted</u> <u>6</u>
(b)	<u>Filing of Pleadings and Papers</u> <u>6</u>
(c)	<u>Filing Time Requirements</u> <u>7</u>
(d)	<u>Filing of Discovery and Disclosures</u> <u>7</u>
DUCivR 5-2	FILING CASES AND DOCUMENTS UNDER COURT SEAL <u>8</u>
(a)	<u>General Rule</u> <u>8</u>
(b)	<u>Sealing of New Cases</u> <u>8</u>
(c)	<u>Sealing of Pending Cases</u> <u>8</u>
(d)	<u>Procedure for Filing Documents Under Seal</u> <u>8</u>
(e)	<u>Access to Sealed Cases and Documents</u> <u>8</u>
(f)	<u>Disposition of Sealed Documents</u> <u>9</u>
DUCivR 5-3	HABEAS CORPUS PETITIONS AND CIVIL RIGHTS COMPLAINTS <u>9</u>
(a)	<u>Form</u> <u>9</u>
(b)	<u>Supporting Affidavit</u> <u>9</u>
(c)	<u>Filing Requirements</u> <u>9</u>
(d)	<u>Answers and Responses</u> <u>9</u>

DUCivR 7-1	MOTIONS AND MEMORANDA	<u>11</u>
(a)	<u>Motions</u>	<u>11</u>
(b)	<u>Supporting Memoranda</u>	<u>11</u>
(c)	<u>Supporting Exhibits to Memoranda</u>	<u>13</u>
(d)	<u>Failure to Respond</u>	<u>13</u>
(e)	<u>Leave of Court and Format for Lengthy Memoranda</u>	<u>13</u>
(f)	<u>Oral Arguments on Motions</u>	<u>13</u>
DUCivR 7-2	USE OF UNPUBLISHED DECISIONS AS AUTHORITY	<u>14</u>
(a)	<u>Citations of Unpublished Decisions</u>	<u>14</u>
(b)	<u>Definition of Unpublished Decision</u>	<u>14</u>
(c)	<u>Form of Citation.</u>	<u>14</u>
DUCivR 10-1	GENERAL FORMAT OF PAPERS	<u>16</u>
(a)	<u>Form of Pleadings and Other Papers</u>	<u>16</u>
(b)	<u>Examination by the Clerk</u>	<u>17</u>
DUCivR 16-1	PRETRIAL PROCEDURE	<u>20</u>
(a)	<u>Pretrial Scheduling and Discovery Conferences</u>	<u>20</u>
(b)	<u>Magistrate Judge</u>	<u>21</u>
(c)	<u>Attorneys' Conference</u>	<u>21</u>
(d)	<u>Final Pretrial Conference</u>	<u>21</u>
(e)	<u>Pretrial Order</u>	<u>21</u>
DUCivR 16-2	ALTERNATIVE DISPUTE RESOLUTION	<u>22</u>
(a)	<u>Authority</u>	<u>22</u>
(b)	<u>Procedures Available</u>	<u>22</u>
(c)	<u>Cases Excluded from ADR Program</u>	<u>22</u>
(d)	<u>Certificate of ADR Election</u>	<u>22</u>
(e)	<u>Case Referral Procedure</u>	<u>22</u>
(f)	<u>Stay of Discovery</u>	<u>23</u>
(g)	<u>ADR Case Administration</u>	<u>23</u>
(h)	<u>Supervisory Power of the Court</u>	<u>23</u>
DUCivR 16-3	SETTLEMENT CONFERENCES	<u>23</u>
(a)	<u>Authority for Settlement Conferences</u>	<u>23</u>
(b)	<u>Referral of Cases for Purposes of Conducting a Settlement Conference</u>	<u>23</u>
(c)	<u>Settlement Proceedings</u>	<u>23</u>
(d)	<u>Confidential Nature of Settlement Proceedings</u>	<u>24</u>
DUCivR 23-1	DESIGNATION OF PROPOSED CLASS ACTION	<u>27</u>

DUCivR 24-1	NOTIFICATION OF CLAIM OF UNCONSTITUTIONALITY	<u>28</u>
(a)	<u>An Act of Congress</u>	<u>28</u>
(b)	<u>A Statute of a State</u>	<u>28</u>
DUCivR 26-1	DISCOVERY REQUESTS AND DOCUMENTS	<u>30</u>
(a)	<u>Form of Responses to Discovery Requests</u>	<u>30</u>
(b)	<u>Filing and Custody of Discovery Materials</u>	<u>30</u>
(c)	<u>Depositions Under Seal</u>	<u>30</u>
DUCivR 37-1	DISCOVERY: MOTIONS AND DISPUTES; REFERRAL TO MAGISTRATE JUDGE	<u>33</u>
(a)	<u>Informal Conference to Settle Discovery Disputes</u>	<u>33</u>
(b)	<u>Motions to Compel Discovery</u>	<u>33</u>
(c)	<u>Discovery Motions Before Magistrate Judge</u>	<u>33</u>
DUCivR 41-1	SANCTIONS: FAILURE TO NOTIFY WHEN SETTLEMENT IS REACHED BEFORE A SCHEDULED JURY TRIAL	<u>35</u>
DUCivR 41-2	DISMISSAL FOR FAILURE TO PROSECUTE	<u>35</u>
DUCivR 42-1	CONSOLIDATION OF CIVIL CASES	<u>36</u>
DUCivR 43-1	COURTROOM PRACTICES AND PROTOCOL	<u>37</u>
(a)	<u>Conduct of Counsel</u>	<u>37</u>
(b)	<u>Exclusion of Witnesses</u>	<u>38</u>
(c)	<u>Arguments</u>	<u>38</u>
(d)	<u>Presence of Parties and Attorneys upon Receiving Verdict or Supplemental Instructions</u>	<u>38</u>
DUCivR 47-1	IMPANELMENT AND SELECTION OF JURORS	<u>40</u>
(a)	<u>How Impaneled</u>	<u>40</u>
(b)	<u>Requests for Voir Dire Examination</u>	<u>40</u>
(c)	<u>Voir Dire Examination and Exercise of Challenges</u>	<u>40</u>
DUCivR 47-2	COMMUNICATION WITH JURORS	<u>40</u>
(a)	<u>Communications Before or During Trial</u>	<u>40</u>
(b)	<u>Communications After Trial</u>	<u>41</u>
DUCivR 48-1	NUMBER OF JURORS; IMPANELING AND SELECTION OF JURY	<u>42</u>
DUCivR 51-1	INSTRUCTIONS TO THE JURY	<u>43</u>
(a)	<u>Proposed Jury Instructions</u>	<u>43</u>

(b)	<u>Ruling on Requests</u>	<u>44</u>
(c)	<u>Objections or Exceptions to Final Instructions</u>	<u>44</u>
DUCivR 54-1	JUDGMENTS: PREPARATION OF ORDERS, JUDGMENTS, FINDINGS OF FACT AND CONCLUSIONS OF LAW	46
(a)	<u>Orders in Open Court.</u>	<u>46</u>
(b)	<u>Orders and Judgments</u>	<u>46</u>
(c)	<u>Proposed Findings of Fact and Conclusions of Law</u>	<u>46</u>
(d)	<u>Written Order Required for Voluntary Dismissals</u>	<u>46</u>
DUCivR 54-2	COSTS: TAXATION OF COSTS AND ATTORNEYS' FEES	47
(a)	<u>Bill of Costs</u>	<u>47</u>
(b)	<u>Objections to Bill of Costs</u>	<u>47</u>
(c)	<u>Taxation of Costs</u>	<u>47</u>
(d)	<u>Judicial Review</u>	<u>47</u>
(e)	<u>Attorneys' Fees</u>	<u>47</u>
(f)	<u>Procedures and Requirements for Motions for Attorneys' Fees</u>	<u>48</u>
DUCivR 56-1	SUMMARY JUDGMENT: MOTIONS AND SUPPORTING MEMORANDA	49
(a)	<u>Motions</u>	<u>49</u>
(b)	<u>Length and Fact Statement of Summary Judgment Memoranda; Filing Times</u>	<u>49</u>
(c)	<u>Contested Facts Declared in Summary Judgment Motion</u>	<u>50</u>
(d)	<u>Citations of Supplemental Authority</u>	<u>50</u>
(e)	<u>Supporting Exhibits to Memoranda</u>	<u>50</u>
(f)	<u>Failure to Respond</u>	<u>50</u>
DUCivR 58-1	JUDGMENT: FINAL JUDGMENT BASED UPON A WRITTEN INSTRUMENT	51
DUCivR 67-1	RECEIPT AND DEPOSIT OF REGISTRY FUNDS	54
(a)	<u>Court Orders Pursuant to Fed. R. Civ. P. 67</u>	<u>54</u>
(b)	<u>Provisions for Designated or Qualified Settlement Funds</u>	<u>54</u>
(c)	<u>Deposit of Required Undertaking or Bond in Civil Actions</u>	<u>55</u>
(d)	<u>Registry Funds Invested in Interest-Bearing Accounts</u>	<u>55</u>
(e)	<u>Service Upon the Clerk</u>	<u>55</u>
(f)	<u>Deposit of Funds</u>	<u>55</u>
(g)	<u>Disbursements of Registry Funds</u>	<u>55</u>
(h)	<u>Management and Handling Fees</u>	<u>56</u>
(i)	<u>Verification of Deposit</u>	<u>56</u>
(j)	<u>Liability of the Clerk</u>	<u>56</u>
DUCivR 69-1	SUPPLEMENTAL PROCEEDINGS	57

(a)	<u>Motion to Appear</u>	<u>57</u>
(b)	<u>Hearing Before Magistrate Judge</u>	<u>57</u>
(c)	<u>Failure to Appear</u>	<u>57</u>
(d)	<u>Fees and Expenses</u>	<u>57</u>
DUCivR 71A-1	DEPOSITS IN THE COURT REGISTRY	<u>58</u>
DUCivR 72-1	MAGISTRATE JUDGE AUTHORITY	<u>59</u>
DUCivR 72-2	MAGISTRATE JUDGE FUNCTIONS AND DUTIES IN CIVIL MATTERS	<u>59</u>
(a)	<u>General Authority</u>	<u>59</u>
(b)	<u>Authority Under Fed. R. Civ. P. 72(a)</u>	<u>59</u>
(c)	<u>Authority Under Fed. R. Civ. P. 72(b)</u>	<u>59</u>
(d)	<u>Authority Under 42 U.S.C. § 1983.</u>	<u>60</u>
(e)	<u>Authority Under 28 U.S.C. §§ 2254 and 2255.</u>	<u>60</u>
(f)	<u>Authority to Function as Special Master</u>	<u>61</u>
(g)	<u>Authority to Adjudicate Civil Cases</u>	<u>61</u>
DUCivR 74-1	APPEAL OF MAGISTRATE JUDGE ORDERS AND JUDGMENTS IN CIVIL MATTERS	<u>62</u>
(a)	<u>In General</u>	<u>62</u>
(b)	<u>Stays of Magistrate Judge Orders</u>	<u>62</u>
DUCivR 77-1	OFFICE OF RECORD; COURT LIBRARY; HOURS AND DAYS OF BUSINESS	<u>64</u>
(a)	<u>Office of Record</u>	<u>64</u>
(b)	<u>U.S. Courts Law Library</u>	<u>64</u>
(c)	<u>Hours and Days of Business</u>	<u>64</u>
DUCivR 77-2	ORDERS AND JUDGMENTS GRANTABLE BY THE CLERK OF COURT	<u>65</u>
(a)	<u>Orders and Judgments</u>	<u>65</u>
(b)	<u>Clerk's Action Reviewable</u>	<u>66</u>
DUCivR 77-3	WAIVER OF NOTICE OF ORDERS ENTERED IN RESPONSE TO STIPULATIONS	<u>66</u>
DUCivR 79-1	ACCESS TO COURT RECORDS	<u>67</u>
(a)	<u>Access</u>	<u>67</u>
(b)	<u>Sealed or Impounded Records</u>	<u>67</u>
(c)	<u>Search for Cases by the Clerk</u>	<u>67</u>
DUCivR 81-1	SCOPE AND APPLICABILITY OF RULES	<u>68</u>

(a)	<u>Scope of Rules</u>	<u>68</u>
(b)	<u>Relationship to Prior Rules; Actions Pending on Effective Date</u>	<u>68</u>
DUCivR 83-1.1	ATTORNEYS - ADMISSION TO PRACTICE	<u>69</u>
(a)	<u>Practice Before the Court</u>	<u>69</u>
(b)	<u>Admission to the Bar of this Court</u>	<u>69</u>
(c)	<u>Active Member Status Requirement</u>	<u>70</u>
(d)	<u>Admission Pro Hac Vice</u>	<u>70</u>
(e)	<u>Participation of Associate Local Counsel</u>	<u>71</u>
(f)	<u>Attorneys for the United States</u>	<u>71</u>
(g)	<u>Pro Se Representation</u>	<u>72</u>
(h)	<u>Standards of Professional Conduct</u>	<u>72</u>
DUCivR 83-1.2	ATTORNEYS - REGISTRATION OF ATTORNEYS	<u>72</u>
(a)	<u>General Requirement</u>	<u>72</u>
(b)	<u>Categories of Membership</u>	<u>72</u>
(c)	<u>Non-Member Status</u>	<u>73</u>
(d)	<u>Failure to Register</u>	<u>73</u>
DUCivR 83-1.3	ATTORNEYS - APPEARANCES BY ATTORNEYS	<u>73</u>
(a)	<u>Attorney of Record</u>	<u>73</u>
(b)	<u>Notification of Clerk</u>	<u>74</u>
(c)	<u>Appearance by Party</u>	<u>74</u>
DUCivR 83-1.4	ATTORNEYS - WITHDRAWAL OR REMOVAL OF ATTORNEY	<u>74</u>
(a)	<u>Withdrawal and Substitution</u>	<u>74</u>
(b)	<u>Responsibilities of Party Upon Removal</u>	<u>75</u>
DUCivR 83-1.5	ATTORNEYS - DISCIPLINE OF ATTORNEYS	<u>76</u>
(a)	<u>General Provisions</u>	<u>76</u>
(b)	<u>Discipline of Attorneys</u>	<u>76</u>
(c)	<u>Attorney Waiver and Consent to Discipline</u>	<u>77</u>
(d)	<u>Interim Suspension of Attorneys</u>	<u>77</u>
(e)	<u>Resignation and Consensual Disbarment</u>	<u>78</u>
(f)	<u>Reciprocal Discipline</u>	<u>78</u>
(g)	<u>Criminal Convictions</u>	<u>79</u>
(h)	<u>Process and Procedure</u>	<u>79</u>
(i)	<u>Reinstatement</u>	<u>82</u>
(j)	<u>Fees and Costs</u>	<u>83</u>
DUCivR 83-1.6	ATTORNEYS - STUDENT PRACTICE RULE	<u>83</u>
(a)	<u>Entry of Appearance on Written Consent of Client and Supervising Attorney</u>	<u>83</u>

(b)	<u>Law Student Eligibility</u>	<u>83</u>
(c)	<u>Responsibilities of Supervising Attorney</u>	<u>84</u>
(d)	<u>Scope of Representation</u>	<u>85</u>
(e)	<u>Law School Certification</u>	<u>85</u>
DUCivR 83-2	ASSIGNMENT OF CIVIL CASES	86
(a)	<u>Random Selection Case Assignment System</u>	<u>86</u>
(b)	<u>Judicial Recusal</u>	<u>86</u>
(c)	<u>Emergency Matters</u>	<u>86</u>
(d)	<u>Post-Conviction Relief</u>	<u>86</u>
(e)	<u>Section 2255 Motions</u>	<u>86</u>
DUCivR 83-3	CAMERAS, RECORDING DEVICES, AND BROADCASTS	86
DUCivR 83-4	COURT SECURITY	87
(a)	<u>Application of the Rule</u>	<u>87</u>
(b)	<u>Persons Subject to Search</u>	<u>87</u>
(c)	<u>Weapons</u>	<u>87</u>
(d)	<u>Safety</u>	<u>87</u>
DUCivR 83-5	CUSTODY AND DISPOSITION OF TRIAL EXHIBITS	88
(a)	<u>Prior to Trial</u>	<u>88</u>
(b)	<u>During Trial</u>	<u>88</u>
(c)	<u>After Trial</u>	<u>88</u>
DUCivR 83-6	STIPULATIONS: PROCEDURAL REQUIREMENT	89
DUCivR 83-7.1	BANKRUPTCY - REFERRAL OF BANKRUPTCY MATTERS TO BANKRUPTCY JUDGES	90
(a)	<u>Order of Reference</u>	<u>90</u>
(b)	<u>Scope of the Order of Reference</u>	<u>90</u>
(c)	<u>Procedure for Change of Venue Motions</u>	<u>90</u>
DUCivR 83-7.2	BANKRUPTCY - TRANSFER OF BANKRUPTCY CASES OR PROCEEDINGS TO THE DISTRICT COURT	91
(a)	<u>Motion and Grounds for Transfer</u>	<u>91</u>
(b)	<u>Time for Making a Motion to Withdraw in Case</u>	<u>91</u>
(c)	<u>Time for Making a Motion to Withdraw in Adversary Proceeding</u>	<u>91</u>
(d)	<u>Motions on Adversary Proceedings Removed Under 28 U.S.C. § 1452.</u>	<u>91</u>
(e)	<u>Motions on Other Adversary Proceedings</u>	<u>91</u>
(f)	<u>Transmittal of Motion to District Court</u>	<u>92</u>
DUCivR 83-7.3	BANKRUPTCY - DETERMINATION OF PROCEEDINGS AS "NON-	

	CORE"	<u>92</u>
DUCivR 83-7.4	BANKRUPTCY - LOCAL BANKRUPTCY RULES OF PRACTICE	<u>92</u>
DUCivR 83-7.5	BANKRUPTCY - JURY TRIALS IN BANKRUPTCY COURT	<u>92</u>
DUCivR 83-7.6	BANKRUPTCY - CONTEMPT OF BANKRUPTCY COURT	<u>93</u>
(a)	<u>Contempt of Court</u>	<u>93</u>
(b)	<u>Order to Show Cause</u>	<u>93</u>
(c)	<u>Service of Order, Objections, and Effective Date</u>	<u>93</u>
(d)	<u>Criminal Contempt</u>	<u>93</u>
DUCivR 83-7.7	BANKRUPTCY - APPEALS TO THE DISTRICT COURT FROM THE BANKRUPTCY COURT UNDER 28 U.S.C. § 158	<u>94</u>
(a)	<u>Authority</u>	<u>94</u>
(b)	<u>Failure to Designate Record or State Issues on Appeal Under Bankruptcy Rule 8006</u>	<u>94</u>
(c)	<u>Failure to Effect Timely Service of Process Under Fed. R. Bank. P. 8009</u>	<u>94</u>
DUCivR 86-1	EFFECTIVE DATE	<u>95</u>
DUCrimR 1-1	SCOPE AND AVAILABILITY; AMENDMENTS; PRIOR RULES ...	<u>96</u>
DUCrimR 1-2	SANCTIONS FOR CRIMINAL RULE VIOLATIONS	<u>96</u>
DUCrimR 5-1	INITIAL APPEARANCE OF PERSONS UNDER ARREST	<u>98</u>
DUCrimR 5-2	PRETRIAL SERVICES REPORT	<u>98</u>
DUCrimR 6-1	RETURNS OF GRAND JURY INDICTMENTS	<u>99</u>
DUCrimR 9-1	ISSUANCE OF ARREST WARRANTS ON COMPLAINTS, INFORMATION, AND INDICTMENTS	<u>101</u>
(a)	<u>Summons or Warrant Request Upon Indictment, Information, or Complaint</u>	<u>101</u>
(b)	<u>Warrant Upon Failure to Appear</u>	<u>101</u>
(c)	<u>Use of Form AO 257</u>	<u>101</u>
DUCrimR 12-1	PRETRIAL MOTIONS: TIMING, FORM, HEARINGS, MOTIONS TO SUPPRESS, CERTIFICATION, AND ORDERS	<u>103</u>
(a)	<u>Timing</u>	<u>103</u>

(b)	<u>Form</u>	<u>103</u>
(c)	<u>Notification of Oral Testimony</u>	<u>103</u>
(d)	<u>Motion to Suppress Evidence</u>	<u>103</u>
(e)	<u>Certification by Government</u>	<u>104</u>
(f)	<u>Preparation and Entry of Order</u>	<u>104</u>
DUCrimR 16-1	DISCOVERY	<u>107</u>
(a)	<u>Rules Governing Discovery Motion Practice</u>	<u>107</u>
(b)	<u>Alibi Witnesses and Mental Illness Experts</u>	<u>107</u>
(c)	<u>Motions Pursuant to Fed. R. Crim. P. 16</u>	<u>107</u>
(d)	<u>Motions Not Governed by Fed. R. Crim. P. 16</u>	<u>108</u>
(e)	<u>Jencks Act Discovery</u>	<u>108</u>
(f)	<u>Discovery Ordered by Pretrial Conference</u>	<u>108</u>
(g)	<u>Motions for Protective or Modifying Orders</u>	<u>108</u>
(h)	<u>Notification of Compliance</u>	<u>108</u>
DUCrimR 16-2	DISCOVERY - SEARCH WARRANTS	<u>109</u>
DUCrimR 17-1	SEALING OF EX PARTE MOTIONS AND ORDERS IN CRIMINAL JUSTICE ACT CASES RELATING TO TRIAL SUBPOENAS AND APPOINTMENT OF EXPERTS	<u>110</u>
DUCrimR 20-1	TRANSFERS UNDER FED. R. CRIM. P. 20	<u>111</u>
DUCrimR 20-2	TRANSFER TO THE DISTRICT FOR PLEAS OR SENTENCING	<u>111</u>
DUCrimR 23-1	NUMBER OF JURORS AND ALTERNATES IN CRIMINAL CASES	<u>112</u>
(a)	<u>Number of Jurors</u>	<u>112</u>
(b)	<u>Number of Alternate Jurors</u>	<u>112</u>
DUCrimR 24-1	IMPANELMENT AND SELECTION OF JURY	<u>113</u>
(a)	<u>Impanelment and Selection of Jury</u>	<u>113</u>
(b)	<u>Use of Alternate Jurors</u>	<u>113</u>
DUCrimR 30-1	INSTRUCTIONS TO THE JURY	<u>116</u>
(a)	<u>Written Proposed Jury Instructions</u>	<u>116</u>
(b)	<u>Ruling on Requests</u>	<u>116</u>
(c)	<u>Objections or Exceptions to Final Instructions</u>	<u>116</u>
DUCrimR 32-1	PRESENTENCE INVESTIGATION REPORTS: TIME, OBJECTIONS, SUBMISSION, RESOLUTION OF DISPUTES	<u>118</u>
(a)	<u>Restrictions on Disclosure of Sentencing Recommendations</u>	<u>118</u>

(b)	<u>Position Statements</u>	<u>118</u>
(c)	<u>Disclosure of Presentence Report</u>	<u>118</u>
DUCrimR 40-1	REMOVAL PROCEEDINGS	<u>121</u>
(a)	<u>Notification of Removal</u>	<u>121</u>
(b)	<u>Delivery of Pertinent Documents</u>	<u>121</u>
(c)	<u>Warrant of Removal</u>	<u>121</u>
DUCrimR 44-1	RIGHT TO AND ASSIGNMENT OF COUNSEL	<u>123</u>
(a)	<u>Applicability</u>	<u>123</u>
(b)	<u>Services Essential to a Proper Defense</u>	<u>123</u>
(c)	<u>Post-Trial Duties of Appointed Attorneys</u>	<u>123</u>
(d)	<u>Payment of Services</u>	<u>124</u>
DUCrimR 44-2	CONSTRAINTS ON JOINT REPRESENTATION	<u>124</u>
(a)	<u>Statement of Policy</u>	<u>124</u>
(b)	<u>Motion, Hearing, and Order</u>	<u>125</u>
DUCrimR 47-1	MOTIONS, SUPPORTING MEMORANDA	<u>126</u>
DUCrimR 49-1	FILING OF PAPERS	<u>127</u>
DUCrimR 49-2	FILING CRIMINAL CASES AND DOCUMENTS UNDER COURT SEAL	<u>127</u>
(a)	<u>Filing of Cases Under Seal</u>	<u>127</u>
(b)	<u>Filing of Documents Under Seal</u>	<u>127</u>
DUCrimR 53-1	COURTROOM PRACTICES AND PROTOCOL	<u>128</u>
DUCrimR 55-1	ACCESS TO COURT RECORDS	<u>129</u>
DUCrimR 56-1	OFFICE OF RECORD; COURT LIBRARY; HOURS AND DAYS OF BUSINESS	<u>129</u>
DUCrimR 57-1	GENERAL FORMAT OF PAPERS	<u>130</u>
DUCrimR 57-2	ASSIGNMENT OF CRIMINAL CASES	<u>130</u>
DUCrimR 57-3	CONSOLIDATION AND FILING OF CRIMINAL CASES	<u>130</u>
(a)	<u>Pending Cases Involving Same Defendant</u>	<u>130</u>
(b)	<u>Filing of Information Related to New Charges Based on Plea Bargains</u>	<u>130</u>
(c)	<u>Filing Requirements</u>	<u>130</u>

DUCrimR 57-4	CRIMINAL CASE PROCESSING	131
(a)	<u>General Authority</u>	131
(b)	<u>Arrest Date Information</u>	131
DUCrimR 57-5	CUSTODY AND DISPOSITION OF TRIAL EXHIBITS	131
DUCrimR 57-6	SPECIAL ORDERS IN WIDELY PUBLICIZED CRIMINAL MATTERS	131
DUCrimR 57-7	PUBLIC COMMUNICATIONS CONCERNING CRIMINAL MATTERS	132
(a)	<u>Statement of Policy</u>	132
(b)	<u>Permissible Communications by Attorneys</u>	132
(c)	<u>Impermissible Communications by Attorneys</u>	132
(d)	<u>Sanctions for Rule Violation</u>	133
DUCrimR 57-8	COMMUNICATION WITH JURORS	133
DUCrimR 57-9	MOTIONS FOR POST-CONVICTION RELIEF	133
(a)	<u>Form of Motion</u>	133
(b)	<u>Duties of the Clerk</u>	133
(c)	<u>Service Upon the Government</u>	133
(d)	<u>Assignment of Motion to Appropriate District Judge</u>	134
(e)	<u>Discretionary Assignment of Motion to Magistrate Judge</u>	134
(f)	<u>Discretionary Hearing</u>	134
(g)	<u>Authority for Proceedings</u>	134
DUCrimR 57-10	RELIEF FROM STATE DETAINER	134
DUCrimR 57-11	STIPULATIONS	134
DUCrimR 57-12	ATTORNEYS	135
DUCrimR 57-13	CAMERAS, RECORDING DEVICES, AND BROADCASTS	135
DUCrimR 57-14	COURT SECURITY	135
DUCrimR 57-15	MAGISTRATE JUDGE AUTHORITY IN CRIMINAL CASES	135
(a)	<u>General Authority</u>	135
(b)	<u>Criminal Pretrial Authority</u>	136
(c)	<u>Authority to Conduct Hearings, Prepare Report and Recommendations, and Determine Preliminary Matters</u>	136
(d)	<u>Criminal Trial Authority</u>	137
(e)	<u>Extradition Proceedings</u>	137

DUCrimR 57-16	APPEAL OF MAGISTRATE JUDGE ORDERS	137
(a)	<u>Preliminary Criminal Matters</u>	137
(b)	<u>Stays of Magistrate Judge Orders</u>	137
(c)	<u>Final Judgments</u>	137
DUCrimR 58-1	APPEALS FROM MAGISTRATE JUDGE DECISIONS IN MISDEMEANORS AND PETTY OFFENSE CASES	138
(a)	<u>Time Frames, Filing, and Service Requirements</u>	138
(b)	<u>Page Limitations</u>	138
(c)	<u>Action by the Court</u>	138
DUCrimR 59-1	EFFECTIVE DATE	139

FED. R. CIV. P. 1
SCOPE AND PURPOSE OF RULES

DUCivR 1-1 AVAILABILITY AND AMENDMENTS

- (a) **Availability.** Copies of these rules, as amended and with appendices, are available from the clerk's office for a reasonable charge set by the clerk. On admission to the bar of this court, each attorney will be provided a copy of these rules. Attorneys admitted pro hac vice will be provided a copy on request and on payment to the clerk of the fee.
- (b) **Amendments to the Rules.** When amendments to these rules are proposed, notice and opportunity for public comment will be provided as directed by the court. When amendments to these rules are approved by the court, notice will be provided.

DUCivR 1-2 SANCTIONS FOR CIVIL RULE VIOLATIONS

The court, on its own initiative, may impose sanctions for violation of these civil rules. Sanctions may include, but are not limited to, the assessment of costs, attorneys' fees, fines, or any combination of these, against an attorney or a party. Barring extraordinary circumstances, cases will not be dismissed for violation of the local rules.

See DUCivR 41-1 for sanctions for failure to notify the court when settlement is reached before a scheduled jury trial.

FED. R. CIV. P. 2
ONE FORM OF ACTION

No corresponding local rule.

<p style="text-align:center"><i>FED. R. CIV. P. 3</i> <i>COMMENCEMENT OF ACTION</i></p>

DUCivR 3-1 CLERK'S SCHEDULE OF MISCELLANEOUS FEES

Under authority of 28 U.S.C. § 1914(a) and (b), the clerk of court will collect from the parties filing and other fees as prescribed by the Judicial Conference of the United States. A current schedule of those fees is posted in the public reception area of the clerk's office, and copies of the fee schedule are available from the clerk on request. Pursuant to 28 U.S.C. § 1914(c), the court authorizes the clerk of court to require advance payment of those fees.

DUCivR 3-2 ACTIONS TO PROCEED WITHOUT PREPAYMENT OF FEES

(a) Non-incarcerated Parties

- (1) Completion of Form AO 240. A non-incarcerated party wishing to proceed without having to pay the required fees under 28 U.S.C. § 1915 must complete and sign, under penalty of perjury, an *Application to Proceed Without Prepayment of Fees and Affidavit* (Application). The Application, Form 240, will be supplied without charge by the clerk of court upon request. A copy of the form is annexed as Appendix I to these rules.
- (2) Conditions for Filing. The clerk of court will not accept any action for filing with the court that is not accompanied by the payment of fees and security or accompanied by an Application which has been granted by the court. Where an action and an Application are submitted jointly to the clerk, the clerk will lodge the action until the court has reviewed the Application. If the application is approved, the clerk will file the action as of the date it was lodged. If the Application is denied, the clerk will notify the party that the action will not be filed until full payment is made.

(b) Incarcerated Parties.

- (1) Completion of an Application. Any incarcerated person seeking to file a civil action and to proceed without prepayment of fees must submit an *Application to Proceed without Prepayment of Fees and Affidavit for Incarcerated Pro Se Plaintiffs*,

(Prisoner Application), copies of which are available from the clerk of court, and a certified statement of the person's prison trust account showing current account status and any account activity for the six-month period preceding the date of the Prisoner Application. A copy of both forms is annexed as Appendix II to these rules. Under the Prison Litigation Reform Act of 1995, the court will order an initial partial filing fee of twenty (20) per cent of the greater of (i) the average monthly deposits to the account during the six-month period preceding the filing of the action, or (ii) the average monthly balance in the account for the six-month period preceding the filing of the action. In each following month, prison officials will calculate twenty (20) per cent of the preceding month's income credited to the prisoner's account and, each time the amount in the account exceeds ten (10) dollars, forward a check for that amount to the clerk of court.

- (2) Conditions for Filing. The clerk will lodge complaints and petitions from incarcerated parties accompanied by a Prisoner Application until certification of account balances and other required documents are received. Once all required documents are received, the clerk will forward the Prisoner Application to the magistrate judge for review. If the Prisoner Application is approved and the fee payment schedule established, the clerk will file the action as of the day it was lodged. If the Prisoner Application is denied, the clerk will inform the prisoner of the decision of the court.
- (3) Dismissal of Claims as Frivolous under 28 U.S.C §1915. On receipt of a Prisoner Application, a magistrate judge may review the complaint and recommend that (i) the Prisoner Application be granted to permit the filing of the action and (ii) that the action be dismissed pursuant to 28 U.S.C. § 1915. If the court accepts the recommendation, the matter will be filed and subsequently closed.

DUCivR 3-3 COMMENCEMENT OF AN ACTION: NOTIFICATION OF MULTI-DISTRICT LITIGATION

An attorney filing a complaint, answer, or other pleading in a case that may be subject to pretrial proceedings before the Judicial Panel on Multidistrict Litigation, under the provisions of 28 U.S.C. § 1407, must submit in writing at the time of filing, or when the filing attorney becomes aware that the matter may be so subject, a description of the nature of the case and the titles and case numbers of all other related cases filed in this or any other jurisdiction.

DUCivR 3-4 CIVIL COVER SHEET

Every complaint or other document initiating a civil action must be accompanied by a *Civil Cover Sheet*, Form JS-44, available from the clerk. All appeals to this court from rulings of the bankruptcy court must be accompanied by a *Cover Sheet for Appeals from the U.S. Bankruptcy Court to the U.S. District Court*, Form DU-28, available from the clerk of court. This requirement is solely for administrative purposes.

See DUCivR 23-1 for caption requirements for class action complaints/pleadings.

***FED. R. CIV. P. 4
SUMMONS***

DUCivR 4-1 SERVICE OF PROCESS

Under Fed. R. Civ. P. 4(c), district judges, magistrate judges, and the clerk of court are authorized to designate persons other than the United States marshal to make service of process.

***FED. R. CIV. P. 4.1
SERVICE OF OTHER PROCESS***

No corresponding local rule.

FED. R. CIV. P. 5
SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

DUCivR 5-1 FILING OF PAPERS

- (a) **Electronic Filing Permitted.** Papers may be filed, signed, and verified by electronic means consistent with the administrative procedures (ECF Procedures) adopted by the court to govern the court's electronic case filing system. A paper filed by electronic means in compliance with the ECF Procedures constitutes a written paper for the purpose of applying these rules.
- (b) **Filing of Pleadings and Papers.** Barring extraordinary circumstances, all pleadings and other case-related papers required to be filed with the court must be filed with the clerk at the office of record in Salt Lake City (i) in person during the business hours set forth in DUCivR 77-1, (ii) in the twenty-four (24) hour filing box located on the south porch of the courthouse, (iii) by mail, or (iv) through the court's electronic filing system. At the time of filing of a document pursuant to subparagraphs (i), (ii), and (iii), the clerk will require:
- (1) the original of all proposed orders, certificates of service, and returns of service;
 - (2) the original and ***one (1)*** copy of all pleadings, motions, and other papers; and,
 - (3) the original and ***two (2)*** copies of all pleadings, motions, and other papers pertaining to a matter that has been referred to a magistrate judge.

Attorneys or parties to any action must not forward originals of pleadings, memoranda, or proposed orders directly to a judge. When court is in session elsewhere in the district, pleadings, motions, proposed orders, and other pertinent papers may be filed with the clerk or with the court at the place where court is being held.

* The ECF Procedures governing electronic filing are available for review, downloading, and printing at <http://www.utd.uscourts.gov>

- (c) **Filing Time Requirements.** Unless otherwise directed by the court, all documents pertaining to a court proceeding must be filed with the clerk a minimum of **two (2) business days** before the scheduled proceeding.
- (d) **Filing of Discovery and Disclosures.** Discovery and disclosure documents, including depositions, must be filed in accordance with DUCivR 26-1 (b) and (c).

DUCivR 5-2 FILING CASES AND DOCUMENTS UNDER COURT SEAL

- (a) **General Rule.** On motion of one or more parties and a showing of good cause, the court or, upon referral, a magistrate judge may order all or a portion of the documents filed in a civil case to be sealed.
- (b) **Sealing of New Cases.**
- (1) **On Ex Parte Motion.** A case may be sealed at the time it is filed upon ex parte motion of the plaintiff or petitioner and execution by the court of a written order. The case will be listed on the clerk's case index as ***Sealed Plaintiff vs. Sealed Defendant.***
- (2) **Civil Actions for False Claims.** When an individual files a civil action on behalf of the individual and the government alleging violation of 31 U.S.C. § 3729, the clerk will seal the complaint for a minimum of sixty (60) days. Extensions may be approved by the court on motion of the government.
- (c) **Sealing of Pending Cases.** A pending case may be sealed at any time upon motion of either party and execution by the court of a written order. Unless the court otherwise orders, neither the clerk's automated case index nor the existing case docket will be modified.
- (d) **Procedure for Filing Documents Under Seal.** Documents ordered sealed by the court or otherwise required to be sealed by statute must be placed unfolded in an envelope with a copy of the cover page of the document affixed to the outside of the envelope. The pleading caption on the cover page must include a notation that the document is being filed under court seal. The sealed document, together with a judge's copy prepared in the same manner, must be filed with the clerk. No document may be designated by any party as ***Filed under Seal*** or ***Confidential*** unless:
- (1) it is accompanied by a court order sealing the document;
- (2) it is being filed in a case that the court has ordered sealed; or
- (3) it contains material that is the subject of a protective order entered by the court.
- (e) **Access to Sealed Cases and Documents.** Unless otherwise ordered by the court, the clerk will provide access to cases and documents under court seal only on court order. Unless

otherwise ordered by the court, the clerk will make no copies of sealed case files or documents.

- (f) **Disposition of Sealed Documents.** Unless otherwise ordered by the court, any case file or documents under court seal that have not previously been unsealed by court order will be unsealed at the time of final disposition of the case.

DUCivR 5-3 HABEAS CORPUS PETITIONS AND CIVIL RIGHTS COMPLAINTS

- (a) **Form.** Petitions for writs of habeas corpus under 28 U.S.C. §§ 2254 and 2255, and pro se civil rights complaints under 42 U.S.C. § 1983 et seq., must (i) be in writing, signed, and verified, and (ii) comply with 28 U.S.C. §§ 2254 and 2255. Forms for such actions are available from the clerk of court.
- (b) **Supporting Affidavit.** A petition, motion, or complaint submitted for filing with an Application to Proceed Without Prepayment of Fees and Affidavit must be accompanied by a supporting affidavit in compliance with DUCivR 3-2. In actions by persons who are incarcerated, this affidavit must be accompanied by (i) a certification, executed by prison officials, as to the availability of funds in any account maintained by the institution for the petitioner or movant, and (ii) documentation of any account activity in the six (6) months preceding the filing date.
- (c) **Filing Requirements.** Petitioners or movants seeking post-conviction relief must file with the clerk of court the original and one copy of the petition, motion, or complaint. If proceeding without prepayment of fees, petitioners and movants, in addition to the original and any required copies, as prescribed in DUCivR 5-1(a), must provide the clerk with one copy for each person named as a defendant in the petition, motion, or complaint.
- (d) **Answers and Responses.** Unless otherwise ordered by the court, petitions for writs of habeas corpus under 28 U.S.C. §§ 2254 and 2255 do not require an answer or other responsive pleading.

FED. R. CIV. P. 6
TIME

No corresponding local rule; however, see DUCivR 77-2 for the clerk's authority to extend time.

FED. R. CIV. P. 7
PLEADINGS ALLOWED; FORM OF MOTIONS

DUCivR 7-1 MOTIONS AND MEMORANDA

(a) **Motions.** All motions must be filed with the clerk of court, or presented to the court during proceedings, except as otherwise provided in this rule and in DUCivR 5-1. Copies shall be provided as required by DUCivR5-1. Motions must set forth succinctly, but without argument, the specific grounds of the relief sought. Failure to comply with the requirements of this section may result in sanctions that may include (i) returning the motion to counsel for resubmission in accordance with the rule, (ii) denial of the motion, or (iii) other sanctions deemed appropriate by the court. Merely to repeat the language of a relevant rule of civil procedure does not meet the requirements of this section.¹

(b) **Supporting Memoranda.**

(1) **Memoranda of Supporting Authorities.** Except as noted below or otherwise permitted by the court, each motion must be accompanied by a memorandum of supporting authorities that is filed or presented with the motion. Although all motions must state grounds for the request and cite applicable rules, statutes, or other authority justifying the relief sought, no memorandum of supporting authorities is required for the following types of motions:

(A) to extend time for the performance of an act, whether required or permitted, provided the motion is made prior to expiration of the time originally prescribed or previously extended by the court;

¹ **ADVISORY COMMITTEE NOTE:** Since 1991, this rule has required that "Motions must set forth succinctly, but without argument, the specific grounds for the relief sought." This means that a motion, itself, must include a summary or outline of the factual and legal bases for the motion.

Because litigants frequently have not adhered to this requirement, this rule was amended in 1993 and, subsequently, 1997 to include sanctions for failure to follow the rule. If a motion does not include a succinct statement of grounds or otherwise does not comply with the rule, the court may (i) return a motion to counsel for resubmission in accordance with the rule; (ii) deny the motion; or (iii) impose other appropriate sanctions. As noted by the 1997 amendment, it is not sufficient merely to refer to a rule of civil procedure or to refer to a memorandum or other papers filed in support of the motion.

- (B) to continue either a pretrial hearing or motion hearing;
 - (C) to appoint a next friend or guardian ad litem;
 - (D) to substitute parties;
 - (E) for referral to or withdrawal from the court's ADR program;
 - (F) for settlement conferences; and
 - (G) for approval of stipulations between the parties.
- (2) Concise Memoranda. Memoranda must be concise and state each basis for the motion and limited citations to case or other authority.
- (3) Length of Memoranda; Filing Times. Memoranda supporting or opposing all motions, including those under Fed. R. Civ. P. 12(b), except those for or treated as for summary judgment, must not exceed ten (10) pages, exclusive of face sheet, table of contents, statements of issues and facts, and exhibits. A memorandum opposing a motion must be filed within fifteen (15) days after service of the motion or within such extended time as allowed by the court. A reply memorandum may be filed at the discretion of the movant within seven (7) days after service of the memorandum opposing the motion. A reply memorandum must be limited to rebuttal of matters raised in the memorandum opposing the motion and must not exceed ten (10) pages. No additional memoranda will be considered without leave of court. Attorneys may stipulate to shorter briefing periods and fewer memorandum pages, and the court encourages them to do so.
- (4) Citations of Supplemental Authority. When pertinent and significant authorities come to the attention of a party after the party's memorandum has been filed, or after oral argument but before decision, a party may promptly file a letter with the court and serve a copy on all counsel, setting forth the citations. There must be a reference either to the page of the memorandum or to a point argued orally to which the citations pertain, but the letter must state, without argument, the reasons for the supplemental citations. Any response must be made, filed promptly, and be similarly limited.

- (c) **Supporting Exhibits to Memoranda.** If any memorandum in support of or opposition to a motion cites documents, interrogatory answers, deposition testimony, or other discovery materials, relevant portions of those materials must be attached to or submitted with the memorandum when it is filed with the court and served on the other parties.
- (d) **Failure to Respond.** Failure to respond timely to a motion may result in the court's granting the motion without further notice.
- (e) **Leave of Court and Format for Lengthy Memoranda.** If a memorandum is to exceed the page limitations set forth in this rule, leave of court must be obtained. A motion for leave to file a lengthy memorandum must include a statement of the reasons why additional pages are needed and specify the number required. The court will approve such requests only for good cause and a showing of exceptional circumstances that justify the need for an extension of the specified page limitations. Absent such showing, such requests will not be approved. A lengthy memorandum must not be filed with the clerk prior to entry of an order authorizing its filing. Memoranda exceeding page limitations, for which leave of court has been obtained, must contain under appropriate headings and in the order here indicated:
- (1) a table of contents, with page references, listing the titles or headings of each section and subsection;
 - (2) a statement of the issues related to the precise relief sought;
 - (3) a concise statement of facts, with appropriate references to the record, relevant to the issues concerning the precise relief sought;
 - (4) argument, preceded by a summary, containing the contentions of the party with respect to the issues presented and the reasons for them, with citations to the authorities, statutes, and parts of the record relied on; and
 - (5) a short conclusion stating the precise relief sought.
- (f) **Oral Arguments on Motions.** The court on its own initiative may set any motion for oral argument or hearing. Otherwise, requests for oral arguments on motions will be granted on good cause shown. If oral argument is to be heard, the motion will be promptly set for hearing. Otherwise, motions are to be submitted to and will be determined by the court on the basis of the written memoranda of the parties.

See DUCivR 56-1 for specific provisions regarding summary judgment motions and memoranda in support and opposition to such motions.

DUCivR 7-2 USE OF UNPUBLISHED DECISIONS AS AUTHORITY

- (a) **Citations of Unpublished Decisions.** If an unpublished decision is cited, a copy of that decision must be attached to the memorandum or paper in which it is cited and served on all parties. A file of the unpublished decisions of this court, organized by district judge and indexed chronologically, is maintained by the U.S. Courts Law Library and is available to the bar and public during library hours as set forth in DUCivR 77-1(c).
- (b) **Definition of Unpublished Decision.** For purposes of this rule, a decision is considered unpublished if it is not published in an official reporter of the issuing court or if it has been designated not for official publication.
- (c) **Form of Citation.** Unpublished decisions of judges of the United States district courts should be cited as follows: Smith v. Jones, No. 2:87CV2302 (DU, March 1, 1989). Unpublished decisions of the United States Courts of Appeals should be cited in the following form: Smith v. Jones, No. 4101 (CA-10/DKS, March 1, 1989).

***FED. R. CIV. P. 8
GENERAL RULES OF PLEADINGS***

No corresponding local rule.

***FED. R. CIV. P. 9
PLEADING SPECIAL MATTERS***

No corresponding local rule; however, see DUCivR 7-1 for court policy and procedural requirements regarding motions and memoranda.

**FED. R. CIV. P. 10
FORM OF PLEADINGS**

DUCivR 10-1 GENERAL FORMAT OF PAPERS

(a) Form of Pleadings and Other Papers. Except as otherwise permitted by the court or a magistrate judge for institutionalized persons, all pleadings, motions, and other papers:

- (1) presented for filing in person or by mail must be on 8 ½ x 11 inch white paper of good quality, with a top margin of not less than 1½ inch, all other margins of not less than 1 inch, and impression only on one side of the paper. Such originals must be flat and unfolded; or
- (2) transmitted for filing through the court’s electronic filing system must conform to the ECF procedures.

Where required, copies of all originals must be prepared by using a clearly legible duplication process; copies produced via facsimile transmission are not acceptable for filing with the court. Text must be typewritten or plainly printed and double-spaced except for quoted material and footnotes. Each page must be numbered consecutively. The top of the first page of each paper filed with the court must contain the following:

Counsel Submitting, e-mail address, and Utah State Bar Number²

Attorney For

Address

Telephone

Fax Number

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, _____ DIVISION**

Name of Case

Case No. w/District Judge Initials

Title of Document

Magistrate Judge's Name (When Applicable)

² Attorneys admitted to practice pro hac vice are not required to include a bar number.

Proposed orders submitted to the court must comply with DUCivR 54-1. Such orders must be prepared and submitted as separate documents, not attached to or included in motions or pleadings.

The address of a party must be included on the first document filed by an attorney on behalf of that party. All documents served or filed after the commencement of a case must include the properly captioned case number. For example:

Central Division Civil Cases	2:05CV0001PGC
Northern Division Civil Cases	1:05CV0001PGC
Central Division Criminal Cases	2:05CR0001PGC
Northern Division Criminal Cases	1:05CR0001PGC

Legend:

2	=	Central Division
1	=	Northern Division
05	=	Calendar Year
CV	=	Civil Case
CR	=	Criminal Case
0000	=	Consecutive Case Number
PGC	=	Assigned Judge

The title of each document must indicate its nature and on whose behalf it is filed. Where jury trial is demanded in or by endorsement upon a pleading as permitted by the Federal Rules of Civil Procedure, the words "JURY DEMANDED" must be placed in capital letters on the first page immediately below the title of the pleading. Where a matter has been referred to a magistrate judge, the caption for all motions, pleadings, and related documents in the matter must include the name of the magistrate judge below the title of the document.

- (b) **Examination by the Clerk.** The clerk of court will examine all pleadings and other papers filed and may require counsel to properly revise or provide required copies of pleadings or other papers not conforming to the requirements set forth in these rules.

FED. R. CIV. P. 11
SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS; REPRESENTATIONS
TO COURT; SANCTIONS

No corresponding local rule; however, see DUCivR 1-2 for rule violation sanctions.

FED. R. CIV. P. 12
DEFENSES AND OBJECTIONS-WHEN AND HOW PRESENTED-BY PLEADING OR
MOTION-MOTION FOR JUDGMENT ON THE PLEADINGS

No corresponding local rule; however, see DUCivR 7-1 for guidelines on motions and memoranda; DUCivR 7-2 for guidelines on citing unpublished opinions; and DUCivR 56-1 for guidelines on summary judgment motions and memoranda in support of or in opposition to such motions.

FED. R. CIV. P. 13
COUNTERCLAIM AND CROSS-CLAIM

No corresponding local rule.

FED. R. CIV. P. 14
THIRD-PARTY PRACTICE

No corresponding local rule.

FED. R. CIV. P. 15
AMENDED AND SUPPLEMENTAL PLEADINGS

No corresponding local rule.

<p style="text-align: center;"><i>FED. R. CIV. P. 16</i> <i>PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT</i></p>
--

DUCivR 16-1 PRETRIAL PROCEDURE

(a) Pretrial Scheduling and Discovery Conferences.

(1) Scheduling Conference. In accordance with Fed. R. Civ. P. 16, except in categories of actions exempted under subsection (A), below, the court, or a magistrate judge when authorized under section (B), below, will enter, by a scheduling conference or other suitable means, a scheduling order. When a scheduling conference is held, trial counsel should be in attendance and must indicate to the court (i) who trial counsel will be, (ii) their respective discovery requirements, (iii) the potential of the case for referral to the court's ADR program, and (iv) the discovery cutoff date.³ If counsel cannot agree to a discovery cutoff date, such date will be determined by the district judge or the magistrate judge conducting the conference.

(A) The following categories of cases are exempt from these scheduling conference and scheduling order requirements:

- (i) Cases filed by prisoners, including those based on motions to vacate sentence, petitions for writs of habeas corpus, and allegations of civil rights violations;
- (ii) Cases filed by parties appearing *pro se* or in which all defendants are *pro se*;
- (iii) Bankruptcy appeals and withdrawals;
- (iv) Forfeiture and statutory penalty actions;
- (v) Internal Revenue Service third-party and collection actions;
- (vi) Reviews of administrative decisions by Executive Branch agencies, including Health and Human Services;

³ Annexed to these rules as Appendix III is the general form for reporting to the court the outcome of the attorneys' planning meeting.

- (vii) Actions to enforce or quash administrative subpoenas;
 - (viii) Cases subject to multidistrict litigation;
 - (ix) Actions to compel arbitration or set aside arbitration awards;
 - (x) Proceedings to compel testimony or production of documents in actions pending in another district or to perpetuate testimony for use in any court; and,
 - (xi) Cases assigned to be heard by a three-judge panel.
- (B) Unless otherwise ordered by the court, as a matter of general court policy, incarcerated or otherwise detained *pro se* parties will not be required to comply with Fed. R. Civ. P. 26 (f).
- (b) **Magistrate Judge.** The court may designate a magistrate judge to hold the initial scheduling or any pretrial conference. The court generally will conduct the final pretrial conference in all contested civil cases.
- (c) **Attorneys' Conference.** At a time to be fixed during the scheduling conference, but at least ten (10) days prior to the final pretrial conference, counsel for the parties will hold an attorneys' conference to discuss settlement, a proposed pretrial order, exhibit list and other matters that will aid in an expeditious and productive final pretrial conference.
- (d) **Final Pretrial Conference.** Trial counsel must attend the final pretrial conference with the court. Preparation for this final pretrial conference should proceed pursuant to Fed. R. Civ. P. 16 and should include (i) preparation by plaintiff's counsel of a recommended pretrial order that is submitted to other counsel at least five (5) days prior to the final pretrial date, and (ii) preparation for resolution of unresolved issues in the case.
- (e) **Pretrial Order.** At the time of the pretrial conference, the parties will submit to the court for execution a proposed pretrial order previously served on and approved by all counsel. The form of the pretrial order should conform generally to the approved form of pretrial order which is reproduced as Appendix IV to these rules. In the event counsel are unable to agree to a proposed pretrial order, each party will state its contentions as to the portion of the pretrial order upon which no agreement has been reached. The court then will determine a final form for the pretrial order and advise all counsel. Thereafter, the order will control the

course of the trial and may not be amended except by consent of the parties and the court or by order of the court to prevent manifest injustice. The pleadings will be deemed merged therein.

DUCivR 16-2 ALTERNATIVE DISPUTE RESOLUTION

- (a) **Authority.** Under 28 U.S.C. §§ 471-482 and §§ 651-658 and the court's Civil Justice Expense and Delay Reduction Plan of 1991, the court has established an experimental court-annexed alternative dispute resolution (ADR) program for the District of Utah.
- (b) **Procedures Available.** The procedures available under the court's ADR program include arbitration and mediation. In addition, notwithstanding any provision of this rule, all civil actions may be the subject of a settlement conference as provided in DUCivR 16-3.
- (c) **Cases Excluded from ADR Program.** Unless otherwise ordered by the assigned judge, cases in which a prisoner is a party are not subject to this rule. Parties to cases that originate as bankruptcy adversary proceedings, as appeals from the bankruptcy court, or as reviews of judgments of administrative law forums or other official adjudicated proceedings may elect to have their disputes mediated but not arbitrated.
- (d) **Certificate of ADR Election.** Except as excluded by section (c) of this rule, all counsel in civil actions must certify to the court that they have discussed the court's ADR program with their clients and must indicate whether the party elects to have the action referred in the program. This ADR Certification must be submitted in conjunction with the attorney report filed pursuant to Fed. R. Civ. P. 26. If one or more of the parties elects referral to the ADR program, the court or magistrate judge conducting the initial scheduling conference will consult with the parties in attendance whether to have the case referred to the program.
- (e) **Case Referral Procedure.** Referral into the court's ADR program will be made by order of the district, bankruptcy, or magistrate judge. Such referral may be made after consultation with the parties at the initial scheduling conference, upon the motion of one or more parties, or upon the court's own motion. The order will designate whether the case is referred to mediation or arbitration.

- (f) **Stay of Discovery.** Unless otherwise stipulated by all parties, formal discovery pursuant to Fed. R. Civ. P. 26 through 37 will be stayed with respect to all parties upon entry of an order referring a civil action to the court's ADR program. Unless otherwise ordered by the assigned judge, no scheduled pretrial hearings or deadlines will be affected by referral into the ADR program.
- (g) **ADR Case Administration.** The administration of all cases referred to the ADR program will be governed by the District of Utah ADR Plan, a copy of which is appended to these rules.
- (h) **Supervisory Power of the Court.** Notwithstanding any provision of this rule or the court's ADR Plan, every civil action filed with the court will be assigned to a judge as provided in DUCivR 83-2 of these rules. The assigned judge retains full authority to supervise such actions, consistent with Title 28, U.S.C., the Federal Rules of Civil Procedure, and these rules.

DUCivR 16-3 SETTLEMENT CONFERENCES

- (a) **Authority for Settlement Conferences.** In any case pending in this court, the assigned judge may require, or any party may at any time request, the scheduling of a settlement conference.
- (b) **Referral of Cases for Purposes of Conducting a Settlement Conference.** Under Fed. R. Civ. P. 16(a)(5) and (c)(9) and 28 U.S.C. § 636(b)(1), the district judge to whom the case has been assigned for trial may refer it, for the purpose of undertaking a settlement conference, either to another district judge or, on consultation with the parties and their counsel, to a magistrate judge.
- (c) **Settlement Proceedings.** The settlement judge or magistrate judge may require the presence of the parties and their counsel, may meet privately from time to time with one party or counsel, and may continue the settlement conference from day to day as deemed necessary. The settlement judge or magistrate judge may discuss any aspect of the case and make suggestions or recommendations for settlement. Counsel for each party to the settlement conference must ensure that a person or representative with full settlement authority or

otherwise authorized to make decisions regarding settlement is available in person or by telephone during the settlement conference.

- (d) **Confidential Nature of Settlement Proceedings.** The settlement conference will be conducted in such a way as to permit an informal, confidential discussion among counsel, the parties, and the settlement judge or magistrate judge. The settlement judge or magistrate judge may require settlement memoranda to be submitted either with or without service upon the other parties and counsel participating in the settlement conference, but such memoranda must neither be made a part of the record nor filed with the clerk of court. The settlement judge or magistrate judge may not communicate to the trial judge to whom the case has been assigned the confidences of the conference, except to report whether or not the case has been settled. Such report must be made in writing, with copies to the parties and their counsel, within a reasonable time following the conference or within such time as the trial judge may direct. If the case does not settle, no oral or written communication made during the settlement conference may be used in the trial of the case or for any other purpose.

FED. R. CIV. P. 17
PARTIES PLAINTIFF AND DEFENDANT; CAPACITY

No corresponding local rule.

FED. R. CIV. P. 18
JOINDER OF CLAIMS AND REMEDIES

No corresponding local rule.

FED. R. CIV. P. 19
JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

No corresponding local rule.

FED. R. CIV. P. 20
PERMISSIVE JOINDER OF PARTIES

No corresponding local rule.

FED. R. CIV. P. 21
MISJOINDER AND NON-JOINDER OF PARTIES

No corresponding local rule.

FED. R. CIV. P. 22
INTERPLEADER

No corresponding local rule; however, see DUCivR 67-1 for provisions on deposit of funds into the court registry.

FED. R. CIV. P. 23
CLASS ACTIONS

DUCivR 23-1 DESIGNATION OF PROPOSED CLASS ACTION

In any case sought to be maintained as a class action, the complaint or other pleading asserting a class action must include within the caption the words, "Proposed Class Action."

FED. R. CIV. P. 23.1
DERIVATIVE ACTIONS BY SHAREHOLDERS

No corresponding local rule.

FED. R. CIV. P. 23.2
ACTIONS RELATING TO UNINCORPORATED ASSOCIATIONS

No corresponding local rule.

**FED. R. CIV. P. 24
INTERVENTION**

DUCivR 24-1 NOTIFICATION OF CLAIM OF UNCONSTITUTIONALITY

- (a) **An Act of Congress.** Whenever the constitutionality of any act of Congress affecting the public interest is, or is intended to be, drawn into question in any suit or proceeding to which the United States, or any of its agencies, officers, or employees, is not a party, counsel for the party raising or intending to raise such constitutional issue must promptly notify the clerk, in writing, specifying the applicable act or the provisions, a proper reference to the title and section of the United States Code if the act is included in it, and a description of the claim of unconstitutionality.

Upon receipt of such notice, the clerk on behalf of the court will file a certificate with the Attorney General of the United States in substantially the following form:

The United States District Court for the District of Utah hereby certifies to the Attorney General of the United States that the constitutionality of an Act of Congress, Title _____, Section _____, United States Code (or other description) is drawn into question the case of _____ v. _____, Case No. _____, to which neither the United States, nor any of its agencies, officers, or employees, is a party. Under Title 28, section 2403(a) of the United States Code, the United States is permitted to intervene in the case for the presentation of evidence, if admissible, and for argument on the question of constitutionality.

The clerk will send copies of the certificate to the United States attorney for the District of Utah and to the district judge to whom the case is assigned.

- (b) **A Statute of a State.** Whenever the constitutionality of any statute of a state affecting the public interest is, or is intended to be, drawn into question in any suit or proceeding to which the state or any of its agencies, officers, or employees, is not a party, counsel for the party raising or intending to raise such constitutional issue must promptly notify the clerk, in writing, specifying the act or its provisions, a reference to the title and section of the statute,

if any, of which the act is part, and a description of the claim of unconstitutionality.

Upon the receipt of such notice, the clerk on behalf of the court will file a certificate with the attorney general of the state in substantially the following form:

The United States District Court for the District of Utah hereby certifies to the Attorney General of the State of _____, that the constitutionality of Title _____, Chapter _____, Section _____, (or other description) is drawn in question in the case of _____ v. _____, Case No. _____, to which neither the State of _____, nor any of its agencies, officers, or employees, is a party. Under Title 28, section 2403(b) of the United States Code, the State of _____ is permitted to intervene in the case for the presentation of evidence, if admissible, and for argument on the question of constitutionality.

The clerk will send a copy of the certificate to the district judge to whom the case is assigned.

<p><i>FED. R. CIV. P. 25</i> <i>SUBSTITUTION OF PARTIES</i></p>

No corresponding local rule.

FED. R. CIV. P. 26
GENERAL PROVISIONS GOVERNING DISCOVERY; DUTY TO DISCLOSE

DUCivR 26-1 DISCOVERY REQUESTS AND DOCUMENTS

- (a) **Form of Responses to Discovery Requests.** Parties responding to interrogatories under Fed. R. Civ. P. 33, requests for production of documents or things under Fed. R. Civ. P. 34, or requests for admission under Fed. R. Civ. P. 36 must repeat in full each such interrogatory or request to which response is made. The parties also must number sequentially each interrogatory or request to which response is made.
- (b) **Filing and Custody of Discovery Materials.**
- (1) **Filing.** Unless otherwise ordered by the court, counsel must not file with the court the following:
- (A) all disclosures made under Fed. R. Civ. P. 26 (a)(1);
 - (B) depositions or notices of taking deposition required by Fed. R. Civ. P. 30(b)(1);
 - (C) interrogatories;
 - (D) requests for production, inspection or admission; and
 - (E) answers and responses to such requests.
- This section does not preclude the use of discovery materials at a hearing, trial, or as exhibits to motions or memoranda.
- (2) **Custody.** The party serving the discovery material or taking the deposition must retain the original and be the custodian of it.
- (c) **Depositions Under Seal.** Unless otherwise ordered by the court, at the request of any attorney of record in the case, the clerk may open the original of any deposition which has been filed with the court in accordance with this rule. The clerk will note on the deposition the date and time at which the deposition was opened. The deposition may not be removed from the clerk's office. This section applies to all depositions, whether recorded by stenographic or non-stenographic means.

FED. R. CIV. P. 27
DEPOSITIONS BEFORE ACTION OR PENDING APPEAL

No corresponding local rule.

FED. R. CIV. P. 28
PERSON BEFORE WHOM DEPOSITIONS MAY BE TAKEN

No corresponding local rule.

FED. R. CIV. P. 29
STIPULATIONS REGARDING DISCOVERY PROCEDURE

No corresponding local rule.

FED. R. CIV. P. 30
DEPOSITIONS UPON ORAL EXAMINATION

No corresponding local rule.

FED. R. CIV. P. 31
DEPOSITIONS UPON WRITTEN QUESTIONS

No corresponding local rule.

FED. R. CIV. P. 32
USE OF DEPOSITIONS IN COURT PROCEEDINGS

No corresponding local rule.

FED. R. CIV. P. 33
INTERROGATORIES TO PARTIES

No corresponding local rule.

FED. R. CIV. P. 34
**PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR
INSPECTION AND OTHER PURPOSES**

No corresponding local rule.

FED. R. CIV. P. 35
PHYSICAL AND MENTAL EXAMINATIONS OF PERSONS

No corresponding local rule.

FED. R. CIV. P. 36
REQUESTS FOR ADMISSION

No corresponding local rule.

FED. R. CIV. P. 37
FAILURE TO MAKE DISCLOSURE OR COOPERATE IN DISCOVERY: SANCTIONS

DUCivR 37-1 DISCOVERY: MOTIONS AND DISPUTES; REFERRAL TO MAGISTRATE JUDGE

- (a) **Informal Conference to Settle Discovery Disputes.** Unless otherwise ordered, the court will not entertain any discovery motion, except those motions brought by a person appearing pro se and those brought under Fed. R. Civ. P. 26(c) by a person who is not a party, unless counsel for the moving party files with the court, at the time of filing the motion, a statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion. Such statement must recite, in addition, the date, time, and place of such consultation and the names of all participating parties or attorneys.
- (b) **Motions to Compel Discovery.** Motions to compel discovery under Fed. R. Civ. P. 37(a) must be accompanied by a copy of the discovery request, the response to the request to which objection is made, and a succinct statement, separately for each objection, summarizing why the response received was inadequate.
- (c) **Discovery Motions Before Magistrate Judge.** Motions to compel discovery under Fed. R. Civ. P. 37(a) may be referred to a magistrate judge for hearing or disposition. The magistrate judge has authority to enter appropriate orders granting such motions and compelling discovery. In addition, the magistrate judge may make such protective order as the court is empowered to make on any motion under Fed. R. Civ. P. 26(c). The magistrate judge, however, may not enter any order which is dispositive of a substantive issue in the case except as permitted by 28 U.S.C. § 636(b)(1)(B) and (C) or § 636(b)(3). The magistrate judge may award expenses, costs, attorneys' fees, or other sanctions under a motion under Fed. R. Civ. P. 37(a). (The provisions of 28 U.S.C. § 636(b)(1)(A) cover review of magistrate judges' orders.)

***FED. R. CIV. P. 38
JURY TRIAL OF RIGHT***

No corresponding local rule.

***FED. R. CIV. P. 39
TRIAL BY JURY OR BY THE COURT***

No corresponding local rule.

***FED. R. CIV. P. 40
ASSIGNMENT OF CASES FOR TRIAL***

No corresponding local rule; however, see DUCivR 83-6 for procedural requirements for enforceable stipulations regarding conduct of trials; also see DUCivR 83-2 for assignment of civil cases.

<p><i>FED. R. CIV. P. 41</i> <i>DISMISSAL OF ACTIONS</i></p>
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**DUCivR 41-1 SANCTIONS: FAILURE TO NOTIFY WHEN SETTLEMENT IS REACHED
BEFORE A SCHEDULED JURY TRIAL**

In any case for which a trial date has been scheduled, the parties must immediately notify the court of any agreement reached by the parties which resolves the litigation as to any or all of the parties. Whenever a civil action scheduled for jury trial is settled or otherwise disposed of by agreement in advance of the trial date, jury costs paid or incurred may be assessed against the parties and their attorneys as directed by the court. Jury costs will include attendance fees, per diem, mileage, and parking. No jury costs will be assessed if notice of settlement or disposition of the case is given to the jury section of the clerk's office at least one (1) full business day prior to the scheduled trial date.

DUCivR 41-2 DISMISSAL FOR FAILURE TO PROSECUTE

The court may issue at any time an order to show cause why a case should not be dismissed for lack of prosecution. If good cause is not shown within the time prescribed by the order to show cause, the court may enter an order of dismissal with or without prejudice, as the court deems proper.

<p style="text-align: center;"><i>FED. R. CIV. P. 42</i> <i>CONSOLIDATION; SEPARATE TRIALS</i></p>
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DUCivR 42-1 CONSOLIDATION OF CIVIL CASES

Whenever two or more cases are pending before different judges, any party may file a motion and proposed order to consolidate the cases for hearing by a single judge if the party believes that such cases or matters

- (i) arise from substantially the same transaction or event;
- (ii) involve substantially the same parties or property;
- (iii) involve the same patent, trademark, or copyright;
- (iv) call for determination of substantially the same questions of law; or
- (v) for any other reason would entail substantial duplication of labor or unnecessary court costs or delay if heard by different judges.

The motion may be filed either with the judge assigned the low-number case or the judge assigned to the case for which consolidation is sought. If the motion is granted, the case will be consolidated into the case with the lowest number.

FED. R. CIV. P. 43
TAKING OF TESTIMONY

DUCivR 43-1 COURTROOM PRACTICES AND PROTOCOL

(a) Conduct of Counsel.

- (1) Only one (1) attorney for each party may examine or cross-examine a witness, and not more than two (2) attorneys for each party may argue the merits of the action unless the court otherwise permits.
- (2) To maintain decorum in the courtroom, counsel will abide strictly by the following rules:
 - (A) Counsel will stand, if able, when addressing the court and when examining and cross-examining witnesses.
 - (B) Counsel will not address questions or remarks to opposing counsel without first obtaining permission from the court. Appropriate quiet and informal consultations among counsel off the record are permitted as long as they neither delay nor disrupt the proceedings.
 - (C) The examination and cross-examination of witnesses will be limited to questions addressed to the witnesses. Counsel must refrain from making statements, comments, or remarks prior to asking a question or after a question has been answered.
 - (D) In making an objection, counsel must state plainly and briefly the specific ground of objection and may not engage in argument unless requested or permitted by the court to do so.
 - (E) Only one (1) attorney for each party may make objections concerning the testimony of a witness when being questioned by an opposing party. The objections must be made by the attorney who has conducted or is to conduct the examination or cross-examination of the witness.
 - (F) The examination and cross-examination of witnesses must be conducted from the counsel's table or the lectern, except when necessary to approach the

witness or the courtroom clerk's desk for the purpose of presenting or examining exhibits.

- (b) **Exclusion of Witnesses.** On its own motion or at the request of a party, the court may order witnesses excluded from the courtroom so they cannot hear the testimony of other witnesses. This section of this rule does not authorize exclusion of the following: (i) a party who is a natural person; (ii) an officer or employee of a party that is not a natural person and who is designated as that party's representative by its attorney; or (iii) a person whose presence is shown by a party to be essential to the presentation of the case. Witnesses excluded pursuant to Fed. R. Evid. 615 need not be sworn in advance, but may be ordered not to discuss their testimony with anyone except counsel during the progress of the case. Unless otherwise directed by the court for special reasons, witnesses who have testified may remain in the courtroom even though they may be recalled on rebuttal. Unless otherwise directed by the court upon motion of counsel, witnesses once examined and permitted to step down from the stand will be deemed excused. Counsel are encouraged to make requests for exclusion only when necessary to ensure due process.
- (c) **Arguments.** The court will determine the length of time and the sequence of final arguments.
- (d) **Presence of Parties and Attorneys upon Receiving Verdict or Supplemental Instructions.** All parties and attorneys are obligated to be present in court when the jury returns its verdict or requests further instructions. Parties and attorneys in the immediate vicinity of the court will be notified, but the return of the verdict or the giving of supplemental instructions will not be delayed because of their absence. If, when notification is attempted, the parties and attorneys are not immediately available in the vicinity of the court, they will be deemed to have waived their presence at the return of the verdict or the giving of supplemental instructions requested by the jury.

***FED. R. CIV. P. 44
PROOF OF OFFICIAL RECORD***

No corresponding local rule.

***FED. R. CIV. P. 44.1
DETERMINATION OF FOREIGN LAW***

No corresponding local rule.

***FED. R. CIV. P. 45
SUBPOENA***

No corresponding local rule.

***FED. R. CIV. P. 46
EXCEPTIONS UNNECESSARY***

No corresponding local rule.

FED. R. CIV. P. 47
SELECTION OF JURORS

DUCivR 47-1 IMPANELMENT AND SELECTION OF JURORS

- (a) **How Impaneled.** Unless the court otherwise directs, jurors will be impaneled in the following manner. Sufficient names will be drawn from the courtroom wheel to provide for the requisite number of jurors, to allow for the exercise of the number of preemptory challenges to which the parties are entitled (28 U.S.C. § 1870), and for such additional number as may be necessary to replace those successfully challenged for cause.
- (b) **Requests for Voir Dire Examination.** Unless the court otherwise orders, any special request for voir dire examination of the jury panel regarding the prospective jurors' qualifications to sit must be submitted in writing to the court and served upon the opposing party or parties at least two (2) full business days prior to the time the case is set for trial, unless the court's examination furnishes grounds for additional inquiry.
- (c) **Voir Dire Examination and Exercise of Challenges.** The court will examine the jury panel on voir dire and will permit suggestions from counsel for further examination. If any juror who is called to the box is excused for cause, another juror's name will be drawn when required in order to allow for all challenges. When the panel is accepted for cause, the courtroom clerk will present a list of the jurors in the order of their places in the box to counsel, who alternately will exercise or waive such challenges by appropriate indications on the list. Absent a stipulation of the parties to the contrary, the first twelve (12) jurors named on the list who remain unchallenged will constitute the jury.

DUCivR 47-2 COMMUNICATION WITH JURORS

- (a) **Communications Before or During Trial.** Unless otherwise ordered by the court, no person associated with a case before the court may communicate with a juror or prospective juror in the case, or with the family or acquaintances of such juror, either before or during trial, except in open court and in the course of the court proceedings. No person, whether associated with the case or not, may discuss with or within the hearing of any juror or

prospective juror, any matter touching upon the case or any matter or opinion concerning any witness, party, attorney, or judge in the case.

- (b) **Communications After Trial.** The court will instruct jurors that they are under no obligation to discuss their deliberations or verdict with anyone, although they are free to do so if they wish. The court may set special conditions or restrictions upon juror interviews or may forbid such interviews.

FED. R. CIV. P. 48
NUMBER OF JURORS-PARTICIPATION IN VERDICT

DUCivR 48-1 NUMBER OF JURORS; IMPANELING AND SELECTION OF JURY

In all civil cases, absent a stipulation of the parties to the contrary, the trial jury will consist of twelve (12) members, and the agreement of all twelve (12) members will constitute the verdict of the jury. The court for good cause, however, may excuse jurors from service during trial or deliberation, in which event the verdict still must be unanimous; no verdict will be taken from a jury of fewer than ten members.

FED. R. CIV. P. 49
SPECIAL VERDICTS AND INTERROGATORIES

No corresponding local rule.

FED. R. CIV. P. 50
**JUDGMENT AS A MATTER OF LAW IN JURY TRIALS; ALTERNATIVE MOTION FOR
NEW TRIAL; CONDITIONAL RULINGS**

No corresponding local rule.

FED. R. CIV. P. 51
INSTRUCTIONS TO JURY: OBJECTION

DUCivR 51-1 INSTRUCTIONS TO THE JURY

(a) Proposed Jury Instructions.

- (1) Submission: Unless the court otherwise orders, proposed jury instructions must be served and filed with the court a minimum of two (2) full business days prior to the day the case is set for trial. The court in its discretion may receive additional written requests during the course of the trial. Individual instructions must address only one (1) subject, and the principle of law embraced in any instruction may not be repeated in subsequent instructions.
- (2) Service: Unless the court otherwise orders, service copies of proposed instructions must be received by the adverse party or parties at least two (2) full business days prior to the day the case is set for trial.
- (3) Format: Unless the court permits the submission of proposed jury instructions in electronic format, such instructions must be submitted in paper.
 - (A) Paper: When submitting proposed instructions on paper, counsel should provide two originals and one copy. In the first original and the copy, each proposed instruction must be numbered, must indicate the identity of the party presenting the same, and must contain citations of authority. In the second original, each proposed instruction must be without number and citation.
 - (B) Electronic: When submitting proposed instructions electronically, counsel may utilize any means acceptable to the judge to whom the case is assigned. For the court's permanent file, counsel also must submit a paper original in which each proposed instruction must be numbered, must indicate the identity of the party presenting the same, and must contain citations of authority.

- (b) **Ruling on Requests.** Prior to the argument of counsel, the court, in accordance with Fed. R. Civ. P. 51, will inform counsel of the court's proposed rulings in regard to requests for instructions. If any counsel believes that there has not been sufficient information from the court under Fed. R. Civ. P. 51, counsel should call the matter specifically to the attention of the court upon the record prior to final arguments before the jury.
- (c) **Objections or Exceptions to Final Instructions.** The jury will be instructed orally or in writing as the court may determine. As provided in Fed. R. Civ. P. 51, objections to a charge or objections to a refusal to give instructions as requested in writing must be made by stating such to the court before the jury has retired, but out of the hearing of the jury, specifying (i) the objectionable parts of the charge or the refused instructions; and (ii) the nature and the grounds of objection. Before the jury has left the box, but before formal exceptions to the charge are taken, counsel at the bench are invited to indicate to the court informally any corrections or explanations of the instructions that they believe were omitted due to the inadvertence of the court.

FED. R. CIV. P. 52
FINDINGS BY THE COURT; JUDGMENT OF PARTIAL FINDINGS

No corresponding local rule; however, see DUCivR 54-1 for provisions regarding judgments, orders, and findings of fact and conclusions of law.

FED. R. CIV. P. 53
MASTERS

No corresponding local rule.

FED. R. CIV. P. 54
JUDGMENTS; COSTS

**DUCivR 54-1 JUDGMENTS: PREPARATION OF ORDERS, JUDGMENTS, FINDINGS OF
FACT AND CONCLUSIONS OF LAW**

- (a) **Orders in Open Court.** Unless otherwise determined by the court, orders announced in open court in civil cases must be prepared in writing by the prevailing party, served within five (5) days of the court's action on opposing counsel, and submitted to the court for signature pursuant to the provisions of section (b) of this rule.
- (b) **Orders and Judgments.** Unless otherwise determined by the court, proposed orders and judgments prepared by an attorney must be served upon opposing counsel for review and approval as to form prior to being submitted to the court for review and signature. Approval will be deemed waived if no objections are filed within five (5) days after personal service or eight (8) days after service by mail.
- (c) **Proposed Findings of Fact and Conclusions of Law.** Except as otherwise directed by the court, in all non-jury cases to be tried, counsel for each party must prepare and lodge with the court, at least two (2) full business days before the day the trial is scheduled to begin, proposed findings of fact and conclusions of law consistent with the theory of the submitting party and the facts expected to be proved. Proposed findings should be concise and direct, should recite ultimate rather than mere evidentiary facts, and should be suitable in form and substance for adoption by the court should it approve the contentions of the particular party. Proposed findings also will serve as a convenient recitation of contentions of the respective parties, helpful to the court as it hears and considers the evidence and arguments and relates such evidence, or lack of it, to the salient contentions of the parties.
- (d) **Written Order Required for Voluntary Dismissals.** Dismissal of actions by plaintiff prior to the filing of an answer or dismissal by stipulation of all parties who have appeared in the action, pursuant to Fed. R. Civ. P. 41(a)(1), does not require an order of dismissal from the court. However, for clarity of the record, such dismissal should be evidenced by a court order that is prepared by counsel and submitted to the court or the clerk for signature

pursuant to the provisions of section (b) of this rule or DUCiv R 77-2 of these rules.

See DUCivR 10-1 for format guidelines on preparing orders.

DUCivR 54-2 COSTS: TAXATION OF COSTS AND ATTORNEYS' FEES

- (a) **Bill of Costs.** Within twenty (20) days after the entry of final judgment, the party entitled to recover costs must file a bill of costs on a form available from the clerk of court, a memorandum of costs, and a verification of bill of costs under 28 U.S.C. § 1924. The memorandum of costs must (i) clearly and concisely itemize and describe the costs; (ii) set forth the statutory basis for seeking reimbursement of those costs under 28 U.S.C. § 1920; and (iii) reference and include copies of applicable invoices, receipts, and disbursement instruments. Failure to itemize and verify costs may result in their being disallowed. Proof of service upon counsel of record of all adverse parties must be indicated. Service of the bill of costs by mail is sufficient and constitutes notice as provided by Fed. R. Civ. P. 54(d).
- (b) **Objections to Bill of Costs.** Where a party objects to any item in a bill of costs, such objections must be set forth with any supporting affidavits and documentation and must be filed with the court and served on counsel of record of adverse parties within ten (10) days after filing and service of the bill of costs.
- (c) **Taxation of Costs.** Where no objections are filed, the clerk will tax the costs and allow such items as are taxable under law. Where objections are filed, a hearing may be scheduled at the discretion of the clerk to review the bill of costs and the objections to it. Costs taxed by the clerk will be included in the judgment or decree.
- (d) **Judicial Review.** Taxation of costs by the clerk is subject to review by the court when, under Fed. R. Civ. P. 54(d), a motion for review is filed within five (5) days of the entry on the docket of the clerk's action.
- (e) **Attorneys' Fees.** Attorneys' fees will not be taxed as costs. Motions for attorneys' fees will be reviewed by the court and awarded only upon order of the court.

(f) **Procedures and Requirements for Motions for Attorneys' Fees.** Unless otherwise provided by statute or extended by the court under Fed. R. Civ. P. 6(b), a motion for attorneys' fees authorized by law must be filed and served within thirty (30) days after (i) entry of a judgment or (ii) an appeals court remand that modifies or imposes a fee award. Such motion must conform to the provisions of DUCivR 7-1 of these rules. The motion must (i) state the basis for the award; (ii) specify the amount claimed; and, (iii) be accompanied by an affidavit of counsel setting forth the scope of the effort, the number of hours expended, the hourly rates claimed, and any other pertinent supporting information that justifies the award.

See DUCivR 54-1 for provisions regarding orders, judgments, and findings of fact and conclusions of law.

<p><i>FED. R. CIV. P. 55</i> <i>DEFAULT</i></p>

No corresponding local rule.

FED. R. CIV. P. 56
SUMMARY JUDGMENT

DUCivR 56-1 SUMMARY JUDGMENT: MOTIONS AND SUPPORTING MEMORANDA

- (a) **Motions.** The original and a copy of a summary judgment motion must be filed with the clerk of court, or presented to the court during proceedings, except as otherwise provided in this rule and in DUCivR 5-1. Motions for summary judgment must set forth succinctly, but without argument, the specific grounds of the judgment sought. Failure to comply with the requirements of this section may result in sanctions that may include (i) returning the motion to counsel for resubmission in accordance with the rule, (ii) denial of the motion, or (iii) other sanctions deemed appropriate by the court. Merely to repeat the language of a relevant rule of civil procedure does not meet the requirements of this section.
- (b) **Length and Fact Statement of Summary Judgment Memoranda; Filing Times.** A motion for summary judgment and the supporting memorandum must clearly identify itself in the case caption and introduction. The memorandum in support of a motion for summary judgment must begin with a section that contains a concise statement of material facts as to which movant contends no genuine issue exists. The facts must be numbered and refer with particularity to those portions of the record on which movant relies. Memoranda supporting or opposing a motion for summary judgment must not exceed twenty-five (25) pages in length, exclusive of face sheet, table of contents, statements of issues and facts, and exhibits. A memorandum opposing a motion for summary judgment must be filed within thirty (30) days after service of the motion or within such extended time as allowed by the court. A reply memorandum to such opposing memorandum may be filed at the discretion of the movant within ten (10) days after service of the opposing memorandum. A reply memorandum must be limited to rebuttal of matters raised in the opposing memorandum and must not exceed ten (10) pages. No additional memoranda will be considered without leave of court.

- (c) **Contested Facts Declared in Summary Judgment Motion.** A memorandum in opposition to a motion for summary judgment must begin with a section that contains a concise statement of material facts as to which the party contends a genuine issue exists. Each fact in dispute must be numbered, must refer with particularity to those portions of the record on which the opposing party relies and, if applicable, must state the number of the movant's fact that is disputed. All material facts of record meeting the requirements of Fed. R. Civ. P. 56 that are set forth with particularity in the statement of the movant will be deemed admitted for the purpose of summary judgment, unless specifically controverted by the statement of the opposing party identifying material facts of record meeting the requirements of Fed. R. Civ. P. 56.
- (d) **Citations of Supplemental Authority.** When pertinent and significant authorities come to the attention of a party after the party's memorandum in support of or in opposition to a summary judgment motion has been filed, or after oral argument but before decision, a party may promptly file a letter with the court and serve a copy on all counsel, setting forth the citations. There must be a reference either to the page of the memorandum or to a point argued orally to which the citations pertain, but the letter must state, without argument, the reasons for the supplemental citations. Any response must be made, filed promptly, and be similarly limited.
- (e) **Supporting Exhibits to Memoranda.** If any memorandum in support of or opposition to a summary judgment motion cites documents, interrogatory answers, deposition testimony, or other discovery materials, relevant portions of those materials must be attached to or submitted with the memorandum when it is filed with the court and served on the other parties.
- (f) **Failure to Respond.** Failure to respond timely to a motion for summary judgment may result in the court's granting the motion without further notice.

See DUCivR 7-1 for guidelines regarding motions and memoranda in general, and DUCivR 7-2 for guidelines on citing unpublished decisions.

FED. R. CIV. P. 57
DECLARATORY JUDGMENTS

No corresponding local rule.

FED. R. CIV. P. 58
ENTRY OF JUDGMENT

DUCivR 58-1 JUDGMENT: FINAL JUDGMENT BASED UPON A WRITTEN INSTRUMENT

Unless otherwise ordered by the court, a final judgment based upon a written instrument must be accompanied by the original or certified copy of the instrument which must be filed as an exhibit in the case at the time judgment is entered. The instrument must be marked appropriately as having been merged into the judgment, must show the docket number of the action, and may be returned to the party filing the same upon order of the court only as in the case of other exhibits as provided for in DUCivR 83-5.

FED. R. CIV. P. 59
NEW TRIALS; AMENDMENT OF JUDGMENT

No corresponding local rule.

FED. R. CIV. P. 60
RELIEF FROM JUDGMENT OR ORDER

No corresponding local rule; however, see DUCivR 83-6 for stipulations requiring court approval.

FED. R. CIV. P. 61
HARMLESS ERROR

No corresponding local rule.

FED. R. CIV. P. 62
STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

No corresponding local rule.

FED. R. CIV. P. 63
INABILITY OF A JUDGE TO PROCEED

No corresponding local rule.

FED. R. CIV. P. 64
SEIZURE OF PERSON OR PROPERTY

No corresponding local rule.

FED. R. CIV. P. 65
INJUNCTIONS

No corresponding local rule.

FED. R. CIV. P. 65.1
SECURITY: PROCEEDINGS AGAINST SURETIES

No corresponding local rule.

FED. R. CIV. P. 66
RECEIVERS APPOINTED BY FEDERAL COURTS

No corresponding local rule.

FED. R. CIV. P. 67
DEPOSIT IN COURT

DUCivR 67-1 RECEIPT AND DEPOSIT OF REGISTRY FUNDS

- (a) **Court Orders Pursuant to Fed. R. Civ. P. 67.** Any party seeking to make a Rule 67 deposit, with the exception of criminal cash bail, cost bonds, and civil garnishments, must make application to the court for an order to invest the funds in accordance with the following provisions of this rule.
- (b) **Provisions for Designated or Qualified Settlement Funds.**
- (1) **By Motion.** Where the parties jointly seek to deposit funds into the court's registry to establish a designated or qualified settlement fund under 26 U.S.C. § 468B(d)(2), the parties must identify the deposit as such in a joint motion and stipulation for an order to deposit funds in the court's registry. Such motion also must recommend to the court an outside fund administrator who will be responsible for (i) obtaining the fund employer identification number, (ii) filing all fiduciary tax returns, (iii) paying all applicable taxes, and (iv) otherwise coordinating with the fund depository to ensure compliance with all IRS requirements for such funds.
 - (2) **By Settlement Agreement.** Where the parties enter into a settlement agreement and jointly seek to deposit funds into the court's registry to establish a designated or qualified settlement fund under 26 U.S.C. § 468B(d)(2), the settlement agreement and proposed order must (i) identify the funds as such, and (ii) recommend to the court an outside fund administrator whose responsibilities are set forth in subsection (b)(1) of this rule.
 - (3) **Order of the Court.** A designated or qualified settlement fund will be established by the clerk only on order of the court on motion and stipulation by all parties or on acceptance by the court of the terms of the settlement agreement. The court reserves the authority to designate its own outside fund administrator.

- (c) **Deposit of Required Undertaking or Bond in Civil Actions.** In any case involving a civil action against the State of Utah, its officers, or its governmental entities, for which the filing of a written undertaking or cost bond is required by state law as a condition of proceeding with such an action, the clerk of court may accept an undertaking or bond at the time the complaint is filed in an amount not less than \$300.00. The court may review, fix, and adjust the amount of the required undertaking or bond as provided by law. The court may dismiss without prejudice any applicable case in which the required undertaking or bond is not timely filed.
- (d) **Registry Funds Invested in Interest-Bearing Accounts.** On motion and under Fed. R. Civ. P. 67 or other authority, the court may order the clerk of court to invest certain registry funds in an interest-bearing account or instrument. Under to this rule, any order prepared for the court's signature and directing the investment of funds into an interest-bearing account or instrument must be limited to guaranteed federal government securities. Such orders also must specify the following:
- (1) the length of time the funds should be invested and whether, where applicable, they should be reinvested in the same account or instrument upon maturity;
 - (2) where appropriate, the name(s) and address(es) of the designated beneficiary(ies); and
 - (3) such other information appropriate under the facts and circumstances of the case and the requirements of the parties.
- (e) **Service Upon the Clerk.** Parties obtaining an order as described in section (d) of this rule must serve a copy of the order or stipulation personally upon the clerk of court or the chief deputy clerk.
- (f) **Deposit of Funds.** The clerk will take all reasonable steps to deposit funds that have been placed in the custody of the court into the specified accounts or instruments within ten (10) business days after having been served with a copy of the order or stipulation as provided in section (e) of this rule.
- (g) **Disbursements of Registry Funds.** Any party seeking a disbursement of such funds must prepare an order for the court's review and signature and must serve the signed order upon

the clerk of court or chief deputy clerk. The order must include the payee's full name, complete street address, and social security number or tax identification number. Where applicable, such orders must indicate whether, when released by the court, the investment instruments should be redeemed promptly, subject to possible early withdrawal penalties, or held until the maturity date.

- (h) **Management and Handling Fees.** All funds -- including criminal bond money deposited at interest -- invested into accounts or instruments that fall under the purview of section (d) of this rule may be subject to routine management fees imposed by the financial institution and deducted at the time the accounts are closed or the instruments redeemed. In addition, pursuant to the provisions of the miscellaneous fee schedule established by the Judicial Conference of the United States and as set forth in 28 U.S.C. § 1914, the clerk of court will assess and deduct registry fees according to the formula promulgated by the Director of the Administrative Office of the United States Courts.
- (i) **Verification of Deposit.** Any party that obtains an order directing, and any parties stipulating to, the investment of funds by the clerk must verify, not later than fifteen (15) days after service of the order as provided by section (e) of this rule, that the funds have been invested as ordered or stipulated.
- (j) **Liability of the Clerk.** Failure of any party to personally serve the clerk of court or chief deputy clerk with a copy of the order or stipulation as specified in section (e), or failure to verify investment of the funds as specified in section (i) of this rule, will release the clerk from any liability for the loss of earned interest on such funds.

<p><i>FED. R. CIV. P. 68</i> <i>OFFER OF JUDGMENT</i></p>

No corresponding local rule.

FED. R. CIV. P. 69
EXECUTION

DUCivR 69-1 SUPPLEMENTAL PROCEEDINGS

- (a) **Motion to Appear.** Any party having a final judgment on which execution may issue may make a motion to have the judgment debtor or other person in possession of, or having information relating to, property or other assets that may be subject to execution or distraint appear in court and answer concerning such property or assets. The moving party, on proper affidavit, may request that the debtor or other person be ordered to refrain from alienation or disposition of the property or assets in any way detrimental to the moving party's interest.
- (b) **Hearing Before Magistrate Judge.** A motion under section (a) of this rule will be presented to a magistrate judge and the matter calendared before the magistrate judge for hearing to require the debtor or other person to be examined. In any case in which the moving party seeks a restraint of the debtor's or other person's property, the magistrate judge will make findings and a report for the district judge with an order for restraint that the district judge may issue.
- (c) **Failure to Appear.** Should the debtor or other person fail to appear as directed, the magistrate judge may issue such process as is necessary and appropriate, including arrest, to bring the person before the court. If the conduct of the non-responding person is contemptuous, a proper reference will be made by the magistrate judge to the district judge to whom the matter has been assigned.
- (d) **Fees and Expenses.** The moving party must tender a witness fee and mileage or equivalent to any person, with the exception of the judgment debtor, who, under this rule, is required to appear in court.

FED. R. CIV. P. 70
JUDGMENT FOR SPECIFIC ACTS; VESTING TITLE

No corresponding local rule.

FED. R. CIV. P. 71
PROCESS IN BEHALF OF AND AGAINST PERSONS NOT PARTIES

No corresponding local rule.

FED. R. CIV. P. 71A
CONDEMNATION OF PROPERTY

DUCivR 71A-1 DEPOSITS IN THE COURT REGISTRY

Unless otherwise prohibited by statute, any party seeking to make a Fed. R. Civ. P. 71A(j) deposit in a property condemnation proceeding may do so without a court order by depositing the funds with the court, subject to the approval of the clerk of court. Unless otherwise stipulated by the parties, such funds will be deposited by the clerk of court into the U.S. Treasury, and any interest earned while the funds are so deposited will accrue to the United States. The parties may request, on written stipulation, that the clerk of court invest the funds in an interest-bearing account or instrument. Under DUCivR 67-1(d), the stipulation must specify the nature of the investment, and the parties must serve a copy of the stipulation personally upon the clerk of court or the chief deputy clerk.

<p style="text-align: center;"><i>FED. R. CIV. P. 72</i> <i>MAGISTRATE JUDGES; PRETRIAL ORDERS</i></p>
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DUCivR 72-1 MAGISTRATE JUDGE AUTHORITY

Magistrate judges in the District of Utah are authorized to perform the duties prescribed by 28 U.S.C. § 636 (a)(1) and (2), and they may exercise all the powers and duties conferred upon magistrate judges by statutes of the United States and the Federal Rules of Civil and Criminal Procedure.

DUCivR 72-2 MAGISTRATE JUDGE FUNCTIONS AND DUTIES IN CIVIL MATTERS

- (a) **General Authority.** Unless otherwise directed by the court, magistrate judges are authorized to:
- (1) grant applications to proceed without prepayment of fees;
 - (2) authorize levy, entry, search, and seizure requested by authorized agents of the Internal Revenue Service under 26 U.S.C. § 331 upon a determination of probable cause;
 - (3) conduct examinations of judgment debtors and other supplemental proceedings in accordance with Fed. R. Civ. P. 69;
 - (4) authorize the issuance of postjudgment collection writs pursuant to the Federal Debt Collection Act; and
 - (5) conduct initial scheduling conferences under Fed. R. Civ. P. 16.
- (b) **Authority Under Fed. R. Civ. P. 72(a).** On order of reference and under Fed. R. Civ. P. 72(a), magistrate judges are authorized to hear and determine any procedural motion, discovery motion, or other non-dispositive motion.
- (c) **Authority Under Fed. R. Civ. P. 72(b).** On order of reference and under the provisions of Fed. R. Civ. P. 72(b), magistrate judges are authorized to prepare and submit to the district judge a report containing proposed findings of fact and recommendations for disposition of motions:

- (1) for injunctive relief including temporary restraining orders and preliminary and permanent injunctions,
- (2) for judgment on the pleadings;
- (3) for summary judgment;
- (4) to dismiss;
- (5) under Fed. R. Civ. P. 12(b);
- (6) for default judgments; and
- (7) for judicial review of administrative agency decisions, including benefits under the Social Security Act, and awards or denials of licenses or similar privileges.

Magistrate judges may determine any preliminary matter and conduct any necessary evidentiary hearing or other proceeding arising in the exercise of the authority under this section.

(d) Authority Under 42 U.S.C. § 1983. On an order of reference in prisoner cases filed under 42 U.S.C. § 1983, magistrate judges are authorized to:

- (1) review prisoner suits for deprivation of civil rights arising out of conditions of confinement, issue preliminary orders as appropriate, conduct evidentiary hearings or other proceedings as appropriate, and prepare for submission to the court appropriate reports containing proposed findings of fact and recommendations for disposition of the matter;
- (2) take depositions, gather evidence, and conduct pretrial conferences;
- (3) conduct periodic reviews of proceedings to ensure compliance with prior orders of the court regarding conditions of confinement, and
- (4) review prisoner correspondence.

(e) Authority Under 28 U.S.C. §§ 2254 and 2255. On an order of reference in a case filed under 28 U.S.C. §§ 2254 and 2255, magistrate judges are authorized to perform any or all of the duties set forth in the Rules Governing Proceedings in the United States District Courts under §§ 2254 and 2255 of Title 28, United States Code, including issuing of preliminary orders, conducting evidentiary hearings or other proceedings as appropriate, and preparing for submission to the court a report of proposed findings of fact and

recommendations for disposition of the petition.

- (f) **Authority to Function as Special Master.** In accordance with the provisions of 28 U.S.C. § 636(b)(2) and Fed. R. Civ. P. 53, magistrate judges may be designated by the court to serve as special masters with consent of the parties.
- (g) **Authority to Adjudicate Civil Cases.** In accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73, and on consent of the parties, magistrate judges may be authorized to adjudicate civil case proceedings, including the conduct of jury and non-jury trials and entry of a final judgment.

FED. R. CIV. P. 73
MAGISTRATE JUDGES; TRIAL BY CONSENT AND APPEAL OPTIONS

No corresponding local rule.

FED. R. CIV. P. 74
METHOD OF APPEAL FROM MAGISTRATE JUDGE TO DISTRICT JUDGE UNDER
TITLE 28, U.S.C. § 636(c)(4) AND RULE 73(d)

DUCivR 74-1 APPEAL OF MAGISTRATE JUDGE ORDERS AND JUDGMENTS IN CIVIL MATTERS

(a) In General.

- (1) Objections to magistrate judge orders must be filed and determined under Fed. R. Civ. P. 72(a).
- (2) Objections to magistrate judge reports and recommendations must be filed and determined under Fed. R. Civ. P. 72(b).
- (3) Appeals of magistrate judge judgments in cases heard on the parties' consent will be reviewed by the United States Court of Appeals for the Tenth Circuit.

(b) Stays of Magistrate Judge Orders. Pending review of objections, motions for stay of magistrate judge orders will initially be addressed to the magistrate judge.

FED. R. CIV. P. 75
PROCEEDINGS ON APPEAL FROM MAGISTRATE JUDGE TO DISTRICT JUDGE
UNDER RULE 73(d)

No corresponding local rule.

FED. R. CIV. P. 76
JUDGMENT OF THE DISTRICT JUDGE ON THE APPEAL UNDER RULE 73(d) AND
COSTS

No corresponding local rule.

FED. R. CIV. P. 77
DISTRICT COURTS AND CLERKS

DUCivR 77-1 OFFICE OF RECORD; COURT LIBRARY; HOURS AND DAYS OF BUSINESS

- (a) **Office of Record.** The court's office of record is located in the Frank E. Moss United States Courthouse at 350 South Main Street, Salt Lake City, Utah 84101. The court also maintains an unstaffed clerk's office and a chambers/courtroom facility in the Federal Building, 324 - 25th Street, Ogden, Utah, for occasional use by district court judges, magistrate judges, and bankruptcy court judges for trials and other court activity.
- (b) **U.S. Courts Law Library.** The United States Courts Law Library in the Moss Courthouse contains non-circulating legal reference books, periodicals, and related materials. Access to the library is available to the bar and the public when the librarian is on duty during the days and hours specified in section (c) of this rule.
- (c) **Hours and Days of Business.** Unless otherwise ordered by the court in unusual circumstances, the office of the clerk at this location will be open to the public between the hours of 8:30 a.m. and 5:00 p.m. on all days except Saturdays, Sundays, and legal holidays as set forth below. The court maintains for the convenience of the public and the bar a seven (7) day, twenty-four (24) hour filing box at the south Main Street entrance to the Frank E. Moss United States Courthouse. The box is equipped with a time/date stamp, and case-related pleadings, motions, proposed orders, and other papers that are stamped and deposited in the box will be filed by the clerk on the time/date they were so stamped and deposited.

The following are holidays on which the court will be closed:

- New Year's Day, January 1
- Birthday of Martin Luther King, Jr. (Third Monday in January)
- Presidents' Day (Third Monday in February)
- Memorial Day (Last Monday in May)

- Independence Day, July 4
- Pioneer Day, July 24
- Labor Day (First Monday in September)
- Columbus Day (Second Monday in October)
- Veterans' Day, November 11
- Thanksgiving Day (Fourth Thursday in November)
- Christmas Day, December 25

DUCivR 77-2 ORDERS AND JUDGMENTS GRANTABLE BY THE CLERK OF COURT

(a) Orders and Judgments. The clerk of court is authorized to grant and enter the following orders and judgments without direction by the court:

- (1) orders specifically appointing a person to serve process under Fed. R. Civ. P. 4(c);
- (2) orders extending once for ten (10) days the time within which to answer, reply, or otherwise plead to a complaint, crossclaim, or counterclaim if the time originally prescribed to plead has not expired;
- (3) orders for the payment of money on consent of all parties interested therein;
- (4) if the time originally prescribed has not expired, orders to which all parties stipulate in civil actions extending once for not more than thirty (30) days the time within which to answer or otherwise plead, to answer interrogatories, to respond to requests for production of documents, to respond to requests for admission, or to respond to motions;
- (5) orders to which all parties stipulate dismissing an action, except in cases governed by Fed. R. Civ. P. 23 or 66;
- (6) entry of default and judgment by default as provided for in Fed. R. Civ. P. 55(a) and 55(b)(1); and
- (7) any other orders which, under Fed. R. Civ. P. 77(c), do not require leave or order of the court.

Any proposed order submitted to the clerk under this rule must be signed by the party or attorney submitting it and will be subject to the provisions of Fed. R. Civ. P. 11. In addition,

with the exception of proposed orders for extensions of time, all other proposed orders under this rule are subject to the requirements of DUCivR 54-1. Any proposed order submitted to the clerk for an extension of time under subsections (2) or (4) of section (a) of this rule must state (i) the date when the time for the act sought to be extended is due; (ii) the specific date to which the allowable time for the act is to be extended; and (iii) that the time originally prescribed has not expired. Second and successive requests for extensions of time must be by motion and proposed order to the court and must include a statement of the unusual or exceptional circumstances that warrant the request for an additional extension. In addition to the requirements (i) through (iii), above, such motions and proposed orders must specify the previous extensions granted.

- (b) **Clerk's Action Reviewable.** The actions of the clerk of court under this rule may be reviewed, suspended, altered, or rescinded by the court upon good cause shown.

DUCivR 77-3 WAIVER OF NOTICE OF ORDERS ENTERED IN RESPONSE TO STIPULATIONS

When an order is issued under a written stipulation by the parties or their attorneys, or when an order is made in open court in the parties' or their attorneys' presence, the requirement for the clerk to mail notice of entry of the order under Fed. R. Civ. P. 77(d) will be deemed waived by parties unless such mailing is specifically requested.

FED. R. CIV. P. 78
MOTION DAY

No corresponding local rule.

FED. R. CIV. P. 79
BOOKS AND RECORDS KEPT BY THE CLERK AND ENTRIES THEREIN

DUCivR 79-1 ACCESS TO COURT RECORDS

- (a) **Access.** The public records of the court are available for examination in the office of the clerk during the normal business hours and days specified in DUCivR 77-1. Case files may not be removed from the clerk's office by members of the bar or the public, but the clerk of court will make and furnish copies of official public court records upon request and upon payment of the prescribed fees.
- (b) **Sealed or Impounded Records.** Records or exhibits ordered sealed or impounded by the court are not public records within the meaning of this rule.
See DUCivR 5-2, Filing Cases and Documents Under Court Seal, and DUCivR 83-5, Custody and Disposition of Trial Exhibits
- (c) **Search for Cases by the Clerk.** The office of the clerk is authorized to conduct searches of the most recent ten years of the master indices maintained by the clerk of court and to issue a certificate of such search. Pursuant to the fee schedule, the clerk will charge a fee, payable in advance, for each name for which a search is conducted.

FED. R. CIV. P. 80
STENOGRAPHER; STENOGRAPHIC REPORT OR TRANSCRIPT AS EVIDENCE

No corresponding local rule.

FED. R. CIV. P. 81
APPLICABILITY IN GENERAL

DUCivR 81-1 SCOPE AND APPLICABILITY OF RULES

- (a) **Scope of Rules.** These rules apply in all civil proceedings conducted in the District of Utah.
- (b) **Relationship to Prior Rules; Actions Pending on Effective Date.** These rules supersede all previous rules promulgated by the United States District Court or any judge of this court. These rules govern all applicable proceedings brought in the United States District Court. They also apply to all proceedings pending at the time they take effect, except where, in the opinion of the court, their application is not feasible or would work injustice, in which event the former rules govern.

FED. R. CIV. P. 82
JURISDICTION AND VENUE UNAFFECTED

No corresponding local rule.

FED. R. CIV. P. 83
RULES BY DISTRICT COURTS; JUDGE'S DIRECTIVES: ATTORNEYS

DUCivR 83-1.1 ATTORNEYS - ADMISSION TO PRACTICE

- (a) **Practice Before the Court.** Attorneys who wish to practice in this court, whether as members of the court's bar or pro hac vice in a particular case, must first satisfy the admissions requirements set forth below.
- (b) **Admission to the Bar of this Court.**
- (1) **Eligibility.** Any attorney who is an active member in good standing of the Utah State Bar is eligible for admission to the bar of this court.
 - (2) **Admissions Procedure.**
 - (A) **Registration.** Applicants must file with the clerk a completed and signed registration card available from the clerk and pay the prescribed admission fee.
 - (B) **Motion for Admission for Residents.** Motions for admission of bar applicants must be made orally or in writing by a member of the bar of this court in open court. The applicant(s) must be present at the time the motion is made.
 - (C) **Motion for Admission for Nonresidents.** Motions for admission of bar applicants who reside in other federal districts, but who otherwise conform to sections (a) and (d) of this rule, must be made orally or in writing by a member of the bar of this court before a judge of this court. The motion must indicate the reasons for seeking nonresident admission. Where the applicant is not present at the time the motion is made, and pursuant to the motion being granted, the applicant must submit to the clerk of court an affidavit indicating the date and location the applicant was administered this court's attorney's oath by a U.S. district or circuit court judge.

- (D) Attorney's Oath. When the motion is granted, the following oath will be administered to each petitioner:
- "I do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States and the constitution of the State of Utah; that I will discharge the duties of attorney and counselor at law as an officer of the courts of the State of Utah and the United States District Court for the District of Utah with honesty and fidelity; and that I will strictly observe the rules of professional conduct adopted by the United States District Court for the District of Utah."
- (E) Attorney Roll. Before a certificate of admission is issued, applicants must sign the attorney roll administered by the clerk. Members of the court's bar must advise the clerk in writing within thirty (30) days if they have a change in name, firm, firm name, or office address. The notification must include the attorney's Utah State Bar number.
- (3) Pro Bono Service Requirement. Any attorney who is admitted to the bar of this court must agree, as a condition of such admission, to engage in a reasonable level of pro bono work when requested to do so by the court.
- (c) Active Member Status Requirement. Attorneys who are admitted to the bar of this court under the provisions of section (b) of this rule and who practice in this court must maintain their membership on a renewable basis as is set forth in DUCivR 83-1.2.
- (d) Admission Pro Hac Vice. Attorneys who are not active members of the Utah State Bar but who are members in good standing of the bar of the highest court of another state or the District of Columbia may be admitted pro hac vice upon completion and acknowledgment of the following:
- (1) Application and Fee. Applicants must complete and submit to the clerk an application form available from the clerk of court. Such application must include the case name and number, if any, of other pending cases in this court in which the applicant is an attorney of record. For nonresident applicants, the name, address,

Utah State Bar identification number, telephone number, and written consent of an active local member of this court's bar to serve as associate counsel must be filed with the application. The application also must be accompanied by payment of the prescribed admission fee. Pursuant to the Judicial Conference Schedule of Fees, nonresident United States attorneys and attorneys employed by agencies of the federal government are exempt from the pro hac vice fee requirement but must conform to the other pro hac vice admission requirements of this rule.

- (2) **Motion for Admission.** Applicants must present a written or oral motion for admission pro hac vice made by an active member in good standing of the bar of this court. For nonresident applicants, unless otherwise ordered by a judge of this court, such motion must be granted only if the applicant associates an active local member of the bar of this court with whom opposing counsel and the court may communicate regarding the case and upon whom papers will be served. Applicants who are new residents, unless otherwise ordered by the court, must state either (i) that they have taken the Utah State Bar examination and are awaiting the results, or (ii) that they are scheduled to take the next bar examination.
- (e) **Participation of Associate Local Counsel.** Where an attorney who has been admitted is a nonresident, that attorney must associate a local member of this court's bar who must sign the first pleading filed and who must continue in the case unless another active local member of this court's bar is substituted. If the nonresident attorney fails to respond to any order of the court, for appearance or otherwise, the associated local attorney will have the responsibility and full authority to act for and on behalf of the client in all proceedings in connection with the case, including hearings, pretrial conferences, and trial.
- (f) **Attorneys for the United States.** Attorneys representing the United States government or any agency thereof and who reside within this district are required to be admitted to this court's bar before they will be permitted to practice before this court. Notwithstanding this rule and provided they are at all times members of the bar of another United States district court, resident assistant United States attorneys and attorneys representing agencies of the government will be given twelve (12) months from the date of their commission in which

to take and pass the Utah State Bar examination. During this period, these attorneys may be admitted provisionally to the bar of this court. The requirements of this rule do not apply to judge advocates of the armed forces of the United States representing the government in proceedings supervised by judges of the District of Utah.

- (g) **Pro Se Representation.** Any party proceeding on its own behalf without an attorney will be expected to be familiar with and to proceed in accordance with the rules of practice and procedure of this court and with the appropriate federal rules and statutes that govern the action in which such party is involved.
- (h) **Standards of Professional Conduct.** All attorneys practicing before this court, whether admitted as members of the bar of this court, admitted pro hac vice, or otherwise as ordered by this court, are governed by and must comply with the rules of practice adopted by this court, and unless otherwise provided by these rules, with the Utah Rules of Professional Conduct, as revised and amended and as interpreted by this court.

DUCivR 83-1.2 ATTORNEYS - REGISTRATION OF ATTORNEYS

- (a) **General Requirement.** All attorneys admitted to the practice of law before this court must register with the clerk on or before the first day of July of each year following their admission. Each registrant must certify on the form provided by the clerk to:
 - (1) having read and being familiar with the District Court Rules of Practice; and
 - (2) being a member in good standing of the Utah State Bar and the bar of this court.
- (b) **Categories of Membership.** All registrants for membership in the bar of this court must request on their annual registration form one of two categories of membership, as set forth below:
 - (1) **Active Membership.** All attorneys who practice in this court are required to maintain their membership in the court's bar in *active* status. Such status must be renewed annually and requires payment of a registration fee except where specifically exempted by this rule.
 - (2) **Inactive Membership.** Attorneys who wish to remain a member of the bar of the court but who have retired or no longer practice in this court may maintain their

membership in inactive status by so notifying the clerk in writing. Attorneys filing such notice are be ineligible to practice in this court until reinstated to active status under such terms as the court may direct.

- (3) Exemptions. Judges who are barred by law or rule from the practice of law are exempt from payment of the registration fee for active membership status.
- (c) **Non-Member Status.** Attorneys who are members but who wish to relinquish their membership status must notify the clerk in writing of their intent. Upon receiving such notification, the clerk will remove their names from the court's roll of attorneys.
- (d) **Failure to Register.** Attorneys who do not register with the court, who fail to pay the required fee on an annual basis, or who otherwise fail to notify the court of their intentions will receive notice via first class mail at their last-known address from the clerk of court that their right to practice in this court will be summarily suspended if they do not comply with the registration requirements within thirty (30) days of the mailing of such notice. Attorneys so suspended will be ineligible to practice in this court until their membership has been reinstated under such terms as the court may direct, including application and payment of any delinquent registration fees and payment of such additional amount as the court may direct.

DUCivR 83-1.3 ATTORNEYS - APPEARANCES BY ATTORNEYS

- (a) **Attorney of Record.** The filing of any pleading, unless otherwise specified, will constitute an appearance by the person who signs such pleading, and such person will be considered counsel of record, provided the attorney has complied with the requirements of DUCivR 83-1.1, or party appearing pro se in that matter. If an attorney's appearance has not been established previously by the filing of papers in the action or proceeding, such attorney must file with the clerk a notice of appearance promptly upon undertaking the representation of any party or witness in any court or grand jury proceedings. The form of such notice must follow the example included in these rules as Appendix V. An attorney of record will be deemed responsible in all matters before and after judgment until the time for appeal from a judgment has expired or a judgment has become final after appeal or until there has been a formal withdrawal from or substitution in the case.

- (b) **Notification of Clerk.** In all cases, counsel and parties appearing pro se must notify the clerk's office of any change in address or telephone number.⁴
- (c) **Appearance by Party.** Whenever a party has appeared by an attorney, that party cannot appear or act thereafter in its own behalf in the action or take any steps therein unless an order of substitution first has been made by the court after notice to the attorney of each such party and to the opposing party. However, notwithstanding that such party has appeared or is represented by an attorney, at its discretion the court may hear a party in open court. The attorney who has appeared of record for any party must:
- (1) represent such party in the action;
 - (2) be recognized by the court and by all parties to the action as having control of the client's case; and
 - (3) sign all papers that are to be signed on behalf of the client.

DUCivR 83-1.4 ATTORNEYS - WITHDRAWAL OR REMOVAL OF ATTORNEY

- (a) **Withdrawal and Substitution.** No attorney will be permitted to withdraw or be substituted as attorney of record in any pending action except by written application and by order of the court. All applications for withdrawal must set forth the reasons therefor, together with the name, address, and telephone number of the client, as follows:
- (1) **With Client's Consent.** Where the withdrawing attorney has obtained the written consent of the client, such consent must be submitted with the application and must be accompanied by a separate proposed written order and may be presented to the court ex parte. The withdrawing attorney must give prompt notice of the entry of such order to the client and to all other parties or their attorneys. For attorneys representing the United States or any agency thereof, it is not necessary for the client's signature to appear on the application provided that the client's consent to the withdrawal and substitution of counsel is acknowledged by counsel for all parties.

⁴ For the convenience of counsel, a copy of the Change of Attorney Address form is attached to these rules as Appendix VI.

- (2) Without Client's Consent. Where the withdrawing attorney has not obtained the written consent of the client, the application must be in the form of a motion that must be served upon the client and all other parties or their attorneys. The motion must be accompanied by a certificate of the moving attorney that (i) the client has been notified in writing of the status of the case including the dates and times of any scheduled court proceedings, pending compliance with any existing court orders, and the possibility of sanctions; or (ii) the client cannot be located or, for whatever other reason, cannot be notified of the pendency of the motion and the status of the case.
- (3) After Trial Date is Scheduled. No attorney of record will be permitted to withdraw after an action has been set for trial unless (i) the application includes an endorsement signed by a substituting attorney indicating that such attorney has been advised of the trial date and will be prepared to proceed with trial; (ii) the application includes an endorsement signed by the client indicating that the client is advised of the time and date and will be prepared for trial; or (iii) the court is otherwise satisfied for good cause shown that the attorney should be permitted to withdraw. Where counsel is substituted, the application must state the name, address, telephone number, and, where applicable, Utah State Bar identification number of the substituting counsel.
- (b) **Responsibilities of Party Upon Removal.** Whenever an attorney withdraws or dies, is removed or suspended, or for any other reason ceases to act as attorney of record, the party represented by such attorney must notify the clerk of the appointment of another attorney or of his decision to appear pro se within twenty (20) days or before any further court proceedings are conducted. If substituting counsel, the party also must provide the clerk with the name, current telephone number, address, and, where applicable, Utah State Bar identification number of substituting counsel. If the party is proceeding pro se, the party must provide the party's address and telephone number to the clerk.

DUCivR 83-1.5 ATTORNEYS - DISCIPLINE OF ATTORNEYS

(a) General Provisions.

- (1) Authority, Jurisdiction, and Time. All attorneys admitted to the bar of this court are subject to the disciplinary jurisdiction of this court. Nothing in these rules may be construed as depriving this court of its inherent power to regulate the practice and discipline of attorneys who practice before it.
- (2) Grounds. Unless otherwise ordered by the court, disciplinary proceedings may be initiated against an attorney when (i) disciplined by another jurisdiction; (ii) convicted of a serious crime as described in subsection (g)(2) of this rule; (iii) charged with misconduct by a complainant; or (iv) otherwise charged with having violated ethical or professional standards of conduct.
- (3) Exception. No exception from the procedures set forth in this rule will constitute a defense in a disciplinary proceeding or be grounds for dismissal of any complaint absent a showing of a violation of due process. The respondent has the burden of demonstrating such violation of due process by a preponderance of evidence.

(b) Discipline of Attorneys.

- (1) Disciplinary Panel. The chief judge will designate three magistrate, bankruptcy, or senior or active district judges as the Disciplinary Panel (Panel) to supervise all attorney discipline. One Panel member will be designated as Panel chair.
- (2) Committee on Conduct of Attorneys. The Panel will appoint five members, including a chair, of the court's bar to serve as a Committee on Conduct of Attorneys (Committee). Members will serve staggered three-year terms but no more than two consecutive terms. Members will not be compensated but may be reimbursed for incidental expenses.
- (3) Duties of Committee members. Committee members will review and take action under the provisions of this rule and the direction of the Panel concerning attorney misconduct or reinstatement. The Committee will be guided by, but not limited to, the District Court Rules of Practice and the Rules of Professional Conduct adopted by the Utah Supreme Court, as amended, and adopted by this court.

- (4) Duties of the clerk of court.
- (A) The clerk will maintain a docket of entries in attorney discipline cases summarizing all relevant information and case activity.
 - (B) When a complaint is filed against an attorney, the clerk will seek to determine the attorney's standing and disciplinary record in other bar associations to which the attorney may belong and report all relevant findings to the Panel.
 - (C) The clerk will transmit notice of public actions taken by the Panel to the Utah Supreme Court, the American Bar Association's National Discipline Data Bank, and any bar associations to which the attorney may belong.
- (5) Confidentiality. All attorney disciplinary proceedings will remain confidential until a determination of culpability has been made by the Panel. The clerk, however, may disclose upon request the pendency, subject matter, and status of an investigation if (i) the respondent has waived confidentiality; (ii) the proceeding is based upon allegations that include conviction of a serious crime or public reprimand, suspension, or disbarment by another court; or (iii) the Panel has determined that sufficient cause exists to notify person(s) or organization(s) to protect the public, the interests of justice, or the legal profession.
- (c) Attorney Waiver and Consent to Discipline. Where an attorney, who is the subject of a disciplinary proceeding in this court, does not intend to contest any discipline imposed by this court pursuant to this rule, such attorney may file a waiver and consent for such discipline.
- (d) Interim Suspension of Attorneys. The Panel will order the interim suspension of an attorney (i) who has been convicted of a serious crime as described in subsection (g)(2) of this rule, or (ii) who has been suspended or disbarred by any federal, state, district, territorial, or commonwealth jurisdiction (other jurisdiction), pending further proceedings as set forth in section (h) of this rule. The Panel may order the interim suspension of an attorney (i) who has been convicted of a crime other than as described in subsection (g)(2) of this rule, or (ii)

against whom disciplinary proceedings are pending in this court or in any other jurisdiction, pending further proceedings as set forth in section (h) of this rule.

- (e) **Resignation and Consensual Disbarment.** Any attorney who resigns with discipline pending or consents to be disbarred from practice while the subject of a disciplinary proceeding in another jurisdiction will promptly inform the clerk of this court of such resignation or consensual disbarment. Upon such notice, the clerk will transmit the information to the Committee chair for review and action pursuant to section (h) of this rule.

(f) **Reciprocal Discipline.**

- (1) **Attorney notice to the court.** Upon being disciplined in another jurisdiction, an attorney of the bar of this court must promptly inform the clerk in writing. Upon such notice, the clerk will obtain, verify, and transmit the information to the Committee chair for review and action pursuant to section (h) of this rule.
- (2) **Other notice to the court.** Upon notice other than from the subject attorney that an attorney of the bar of this court has been disciplined in another jurisdiction, the clerk, upon verification of such action, will serve via return receipt certified mail upon that attorney at the attorney's last known address of record an order to show cause issued by the Panel chair why this court should not impose reciprocal disciplinary action. The clerk will include in the mailing written verification from the other jurisdiction. The attorney will have twenty (20) days following service of the show cause order to respond. The clerk will provide the disciplining jurisdiction with a copy of the order and any response by the attorney.
- (3) **Stays.** Where another jurisdiction has stayed its disciplinary action, any reciprocal action imposed in this court may be deferred until such stay expires.
- (4) **Reciprocal discipline imposed; exceptions.** At the conclusion of the twenty (20) day period for responding to the show cause order, the Committee chair will review any response from the attorney and, where requested, schedule a hearing for proceedings under subsection (h)(3)(B) of this rule. The Committee will recommend and the Panel will impose discipline similar to that imposed by the other jurisdiction unless the attorney clearly demonstrates or the Panel finds that (i) the other jurisdiction's

procedure constituted a deprivation of due process; (ii) the evidence establishing the misconduct warrants substantially different discipline; or (iii) imposition of similar discipline by the Panel would result in a grave injustice. Where the Panel makes any such determination, it will enter an appropriate order.

(g) Criminal Convictions.

- (1) Attorney's duty. Any attorney of the bar of this court who is convicted of a serious crime in this or another jurisdiction under subsection (g)(2) of this rule must notify the clerk within thirty (30) days of such conviction.
- (2) Serious crime. Serious crimes will include any felony and any lesser crime involving moral turpitude.
- (3) Process. Upon notification of a judgment of conviction of an attorney of the bar of this court for any crime except an infraction or petty offense, the clerk will refer the matter to the Panel.
- (4) Reinstatement. An attorney of the bar of this court who is suspended for having been convicted of a crime may be reinstated immediately upon the filing of a certificate demonstrating that the conviction has been reversed. However, such reinstatement will not terminate in and of itself any pending disciplinary proceeding against the attorney.

(h) Process and Procedure.

- (1) Complaints. Any person with a complaint against an attorney of this court's bar must sign and submit such complaint in writing and under oath. The complaint will be in the form prescribed by the court and available from the clerk; a copy of the form is annexed to these rules as Appendix VII. Complaints submitted by any magistrate, bankruptcy, or active or senior district judge of this court need neither be verified nor in the specified form nor under oath. All complaints must be filed with the clerk of court and referred by the clerk to the Panel which, upon review, will dismiss those deemed frivolous and refer all others to the Committee. Where a complaint is referred to the Committee, the clerk will serve a copy of the complaint and an order to show cause issued by the Panel chair upon the attorney.

The named attorney must file a response to the show-cause order with the clerk within twenty (20) days after such service.

- (2) Uncontested Complaints. Where the attorney named in the complaint does not contest the charges and files a waiver and consent to discipline, the clerk will transmit the complaint and form to the Panel which will review the complaint and either dismiss it by order or impose appropriate sanctions without further proceedings unless the Panel deems otherwise.
- (3) Contested Complaints. Where the attorney named in the complaint contests the charge(s) or fails to respond to the show-cause order, the clerk will transmit the complaint and response to the Committee chair who will designate a committee member as investigator to review the complaint and prepare a recommendation.
 - (A) Dismissal of the Complaint. Where the recommendation is to dismiss and a majority of the Committee concurs with the recommendation, or where the recommendation is to prosecute the charge(s), but a majority of the Committee disagrees with the recommendation, the Committee chair will refer the complaint, the recommendation, and the Committee's response to the Panel for appropriate action.
 - (B) Prosecution of the Complaint. Where the recommendation is to prosecute the charge(s) in the complaint, or where the recommendation is to dismiss but a majority of the Committee determines that the charges warrant prosecution, the Committee chair will designate one Committee member to serve as a neutral hearing examiner. The Committee member (prosecutor) who conducted the initial review and investigation will prosecute the charge(s) in one or more hearings as appropriate. The hearing examiner will preside over all hearings. At least twenty (20) days prior to any scheduled hearing, the clerk will provide notice to the attorney named in the complaint of the hearing. Such notice will state that (i) the attorney may be represented by counsel at the attorney's own

expense, may cross-examine witnesses, and may present evidence; and
(ii) the hearing examiner may consider any prior record.

- (C) Hearing Process. All hearings must be recorded verbatim by electronic or non-electronic means. The hearing examiner, where authorized by the court, may issue subpoenas for witnesses and production of documents or tangible things. The hearing examiner also will administer oaths to the parties and witnesses. Unless otherwise ordered, the Federal Rules of Evidence will govern. The burden of establishing charges of misconduct by preponderance of the evidence will rest with the prosecutor.
- (D) Preparation and Review of the Report. At the conclusion of the hearing, the hearing examiner will prepare a report of findings of fact, conclusions, and recommendations and transmit the report to the Committee for review and consultation. The Committee will accept, reject, or modify the report. Where the Committee accepts or modifies the report, a majority of the Committee members must sign the report; a minority member may file a dissenting report. The report(s) will be filed with the clerk who will transmit a copy to the prosecutor, the attorney, and the attorney's counsel.
- (E) Objections to the Report. The prosecutor, the attorney named in the complaint, and the attorney's counsel will have ten (10) days from the date of mailing the report(s) to file with the clerk any objections to the report(s). After the time for filing objections has expired, the clerk will transmit to the Panel for its review copies of the report(s) and any objections that have been filed.
- (F) Final Panel Review and Action. The Panel will review the report(s) and determine whether to impose sanctions or take other action, including dismissal of the charge(s) in the complaint. At its discretion, the Panel may refer the matter to the Committee for further proceedings. The

Panel will enter an appropriate order, copies of which will be provided by the clerk to the individual who filed the complaint and to the attorney named in the complaint.

- (4) Frivolous Complaints. Where a Panel member determines that an attorney misconduct complaint filed with the clerk is frivolous and without merit and serves only to try to embarrass or harm the attorney against whom it is made, the Panel member may schedule a hearing and may impose appropriate sanctions against the individual who filed the complaint.

(i) **Reinstatement.**

(1) Petitions.

- (A) Reinstatement following suspension or disbarment is neither automatic nor a matter of right. An attorney suspended for three (3) months or less will be automatically reinstated at the end of the period of suspension upon filing a notice and an affidavit of compliance with all provisions of the suspension order. An attorney suspended for more than three (3) months must file a petition for reinstatement and may not resume practice until the petition for reinstatement has been reviewed and approved by the Panel. A disbarred attorney may not petition for reinstatement within five (5) years of the effective date of the disbarment.
- (B) A petition for reinstatement must include fees in an amount set by the Panel, to cover anticipated costs of reinstatement proceedings, and must be filed with the clerk who will transmit it to the Panel chair for review and disposition.
- (C) Where the Panel denies an attorney's petition for reinstatement, the attorney will not file a new petition within one (1) year of such denial.

- (2) Conditions. A petitioner seeking reinstatement will demonstrate that (i) any conditions for reinstatement have been fully satisfied, and (ii) the petitioner's resumption of practice will not be detrimental to the integrity of the bar of this court,

the interests of justice, or the public.

- (3) **Investigation.** The Panel chair may refer petitions for reinstatement to the Committee for investigation. Where a petition is referred, the Committee chair will designate a Committee member as the investigating attorney to conduct the investigation. The investigating attorney, after such investigation, will submit a report and recommendations to the Committee chair who will transmit them to the Panel. The Panel, after appropriate review, will enter an order granting, conditioning, modifying, or denying the petition for reinstatement.
- (j) **Fees and Costs.** The Panel may tax the costs of disciplinary proceedings under these rules to the attorney respondent or attorney petitioning for reinstatement. Other expenses related to disciplinary proceedings will be paid by the clerk from the court's Bar Fund upon order of the Panel and approval of the chief judge. All costs or reimbursements paid to the clerk in disciplinary cases will be deposited in the Bar Fund.
- A Committee member who serves as an investigator or a prosecutor may apply to the Panel for an award of attorneys' fees and reimbursable expenses at rates established by the court.

DUCivR 83-1.6 ATTORNEYS - STUDENT PRACTICE RULE

- (a) **Entry of Appearance on Written Consent of Client and Supervising Attorney.** An eligible law student may enter an appearance in any civil or misdemeanor case before this court provided that the client on whose behalf the student is appearing and the supervising attorney have filed a written consent with the clerk.
- (b) **Law Student Eligibility.** An eligible law student must:
- (1) Be enrolled and in good standing in a law school accredited by the American Bar Association, or be a recent graduate of such a school awaiting either (i) the first sitting of the bar examination, or (ii) the result of such examination;
 - (2) Have completed legal studies amounting to at least four semesters, or the equivalent if the course work schedule is on some basis other than semesters;
 - (3) Be certified in writing by an official of the law school designated by the dean as having the good character, competent legal ability, and necessary qualifications to

provide the legal representation permitted by this rule;

- (4) Have a working knowledge of the Federal Rules of Civil and Criminal Procedure and Evidence, the Rules of Professional Conduct, and the District Court Rules of Practice; and
- (5) Neither ask for nor receive any kind of compensation or remuneration from any client on whose behalf the student renders services; however, the student may be paid a set salary or hourly wage by an employing lawyer, law firm, government office, or other entity providing legal services to the extent that the employer does not charge or otherwise seek reimbursement from the client for the services rendered by the student.

(c) Responsibilities of Supervising Attorney. A supervising attorney must:

- (1) Be a member in good standing of the bar of this court;
- (2) Obtain and file with the clerk the prior written consent of the client for the services to be performed by the student in the form provided in Appendix VIII to these rules;
- (3) File with the clerk a consent agreement to supervise the student in the form provided in Appendix IX to these rules;
- (4) File with the clerk the law school certification as required by paragraph (b)(3) of this rule and in the form provided in Appendix X to these rules;
- (5) Assume personal professional responsibility for the quality of the student's work and be available for consultation with represented clients;
- (6) Guide and assist the student in all activities undertaken by the student and permitted by this rule to the extent required for the proper practical training of the student and the protection of the client;
- (7) Sign all pleadings or other documents filed with the court; the student may also co-sign such documents;
- (8) Be present with the student at all court appearances, depositions, and at other proceedings in which testimony is taken;
- (9) Be prepared to promptly supplement any of the student's oral or written work as necessary to ensure proper representation of the client.

- (d) **Scope of Representation.** Unless otherwise directed by a judge or magistrate judge, an eligible law student, supervised in accordance with this rule, may:
- (1) Appear as assistant counsel in civil and misdemeanor proceedings on behalf of any client, including federal, state or local government bodies provided that the written consent of the client and the supervising attorney and a copy of the dean's certification previously have been filed with the clerk. The consent form necessary for a student to appear on behalf of the United States must be executed by the United States Attorney or First Assistant United States Attorney. The supervising attorney must be present with the student for all court appearances.
 - (2) Appear as assistant counsel when depositions are taken on behalf of any client in civil and misdemeanor cases when written consent of the client and the supervising attorney and the dean's certification previously have been filed with the clerk.
 - (3) Co-sign motions, applications, answers, briefs, and other documents in civil and misdemeanor cases after their review, approval and signature by the supervising attorney.
- (e) **Law School Certification.** Certification of a student by the law school official must be (i) in the form provided in Appendix X to these rules, (ii) filed with the clerk, and (iii) unless sooner withdrawn, remain in effect for twelve (12) months unless otherwise ordered by a judge or magistrate judge. Certification will automatically terminate if the student (i) does not take the first scheduled bar examination following graduation, (ii) fails to achieve a passing grade in the bar examination, or (iii) is otherwise admitted to the bar of this court. Certification of a student may be withdrawn for good cause by the designated law school official.

DUCivR 83-2 ASSIGNMENT OF CIVIL CASES

Supervision of the random assignment of civil cases to the judges of the court is the responsibility of the chief judge.

- (a) **Random Selection Case Assignment System.** All case assignments are randomly assigned by an automated case assignment system approved by the judges of the court and managed by the clerk under the direction of the chief judge.
- (b) **Judicial Recusal.** In the event of a judicial refusal, another judge will be assigned to the case through the random selection case assignment system described in subsection (a) of this rule. If all judges recuse themselves, the chief judge of the court will request the chief judge of the Tenth Circuit Court of Appeals to assign a judge from another district within the circuit to hear the matter.
- (c) **Emergency Matters.** In the event an assigned judge is ill, out of town, or otherwise unavailable to consider an urgent matter, application for consideration may be made to any available judge of the court. For purposes of efficiency and coordination, requests for emergency judicial action should be directed to and coordinated through the clerk.
- (d) **Post-Conviction Relief.** Whenever a second or subsequent case seeking post-conviction or other relief by petition for writ of habeas corpus is filed by the same petitioner involving the same conviction as in the first case, it will be assigned to the same judge to whom the original case was assigned.
- (e) **Section 2255 Motions.** Under Rule 4 of the Rules Governing Section 2255 Proceedings, all motions under 28 U.S.C. § 2255 will be assigned to the judge to whom the original criminal proceeding was assigned.

DUCivR 83-3 CAMERAS, RECORDING DEVICES, AND BROADCASTS

The taking of photographs; the making of mechanical, electronic, or similar records in the courtroom and areas immediately adjacent thereto in connection with any judicial proceeding, including recesses; and the broadcasting of judicial proceedings by radio, television, or other means, are prohibited. The court, however, may permit the broadcasting, televising, recording, or photographing of investitive, ceremonial, naturalization, and other similar proceedings. The court also may permit the use of electronic or photographic means for the presentation of evidence, for

perpetuation of a record, or as otherwise may be authorized by the court.

DUCivR 83-4 COURT SECURITY

- (a) **Application of the Rule.** This rule applies to any building and environs occupied or used by the United States Courts in the District of Utah. It is in effect at all times that district judges, magistrate judges, or other court personnel are present, whether or not court is in session.
- (b) **Persons Subject to Search.** All persons seeking entry to a building occupied or used by the United States Courts in the District of Utah are subject to search by the United States marshal, deputy United States marshals, or other court security officers designated by the marshal or the court. All persons other than authorized officers and employees of the United States Government are required, upon entering the Frank E. Moss United States Courthouse or other place of holding court in the District of Utah, to submit their persons and belongings in their possession at the time of entry to electronic detection equipment under the supervision of the marshal.
- (c) **Weapons.** With the exception of weapons carried by the United States marshal, deputy United States marshals, court security officers, or federal protective officers, no weapons other than exhibits will be permitted in any place of holding court in the District of Utah; no other person may bring a weapon other than an exhibit into any place of holding court except as specifically permitted by this rule. The carrying of mechanical, chemical, and other weapons into any place of holding court in the District of Utah is subject to the provisions of the Weapons Policy for the District of Utah as set forth by the Court Security Committee and enforced by the United States marshal. The Weapons Policy is annexed to these rules as Appendix XI.
- (d) **Safety.** The court may require that any firearm, other mechanical or chemical weapon, or potentially explosive device intended for introduction as an exhibit first be presented to the United States marshal's office for a safety check prior to its being brought into any courtroom.

DUCivR 83-5 CUSTODY AND DISPOSITION OF TRIAL EXHIBITS

(a) Prior to Trial.

- (1) Marking Exhibits. Prior to trial, each party must mark all the exhibits it intends to introduce during trial by utilizing exhibit labels (stickers) obtained from the clerk of court. Plaintiffs must use consecutive numbers; defendants must use consecutive letters.
- (2) Preparation for Trial. After completion of discovery and prior to the final pretrial conference, counsel for each party must (i) prepare and serve on opposing counsel a list that identifies and briefly describes all marked exhibits to be offered at trial; and (ii) afford opposing counsel opportunity to examine the listed exhibits. Said exhibits also must be listed in the final pretrial order.

(b) During Trial.

- (1) Custody of the Clerk. Unless the court orders otherwise, all exhibits that are admitted into evidence during trial and that are suitable for filing and transmission to the court of appeals as a part of the record on appeal, must be placed in the custody of the clerk of court.
- (2) Custody of the Parties. Unless the court otherwise orders, all other exhibits admitted into evidence during trial will be retained in the custody of the party offering them. Such exhibits will include, but not be limited to, the following types of bulky or sensitive exhibits or evidence: controlled substances, firearms, ammunition, explosive devices, pornographic materials, jewelry, poisonous or dangerous chemicals, intoxicating liquors, money or articles of high monetary value, counterfeit money, and documents or physical exhibits of unusual bulk or weight. With approval of the court, photographs may be substituted for said exhibits once they have been introduced into evidence.

(c) After Trial.

- (1) Exhibits in the Custody of the Clerk. Where the clerk of court does take custody of exhibits under subsection (b)(1) of this rule, such exhibits may not be taken from the custody of the clerk until final disposition of the matter, except upon order of

the court and execution of a receipt that identifies the material taken, which receipt will be filed in the case.

- (2) Removal from Evidence. Parties are to remove all exhibits in the custody of the clerk of court within thirty (30) days after the mandate of the final reviewing court is filed. Parties failing to comply with this rule will be notified by the clerk to remove their exhibits and sign a receipt for them. Upon their failure to do so within thirty (30) days of notification by the clerk, the clerk may destroy or otherwise dispose of the exhibits as the clerk deems appropriate.
- (3) Exhibits in the Custody of the Parties. Unless the court orders otherwise, the party offering exhibits of the kind described in subsection (b)(2) of this rule will retain custody of them and be responsible to the court for preserving them in their condition as of the time admitted, until any appeal is resolved or the time for appeal has expired.
- (4) Access to Exhibits by Parties. In case of an appeal, any party, upon written request of any other party or by order of the court, will make available any or all original exhibits in its possession, or true copies thereof, to enable such other party to prepare the record on appeal.
- (5) Exhibits in Appeals. When a notice of appeal is filed, each party will prepare and submit to the clerk of this court a list that designates which exhibits are necessary for the determination of the appeal and in whose custody they remain. Parties who have custody of exhibits so listed are charged with the responsibility for their safekeeping and transportation to the court of appeals. All other exhibits that are not necessary for the determination of the appeal and that are not in the custody of the clerk of this court will remain in the custody of the respective party, such party will be responsible for forwarding the same to the clerk of the court of appeals on request.

DUCivR 83-6 STIPULATIONS: PROCEDURAL REQUIREMENT

No stipulation between the parties modifying a prior order of the court or affecting the course or conduct of any civil proceeding will be effective until approved by the court.

**DUCivR 83-7.1 BANKRUPTCY - REFERRAL OF BANKRUPTCY MATTERS TO
BANKRUPTCY JUDGES**

- (a) **Order of Reference.** Under 28 U.S.C. § 157(a), unless a rule or order of this court expressly provides otherwise, any and all cases under Title 11 and any and all proceedings arising in or related to a case under Title 11 are referred to the bankruptcy judges for the District of Utah for consideration and resolution consistent with the law. Motions for change of venue in cases under Title 11 and in proceedings arising under Title 11 or arising in or related to a case under Title 11 are referred to the bankruptcy judges for the District of Utah for the limited purpose of hearing the motion in the first instance and submitting to the district court a report and recommendation containing proposed findings of fact and conclusions of law in accordance with section (c) of this rule. This reference applies to all pending bankruptcy cases and proceedings except those currently before the district court and to all bankruptcy cases and proceedings hereafter filed in the District of Utah.
- (b) **Scope of the Order of Reference.** This reference includes, except as limited in section (c) of this rule:
- (1) Personal injury tort and wrongful death claims or causes of action within the purview of 28 U.S.C. § 157(b)(5);
 - (2) State law claims or causes of action of the kind referred to in 28 U.S.C. § 1334(c)(2); and
 - (3) Involuntary cases under 11 U.S.C. § 303.
- (c) **Procedure for Change of Venue Motions.** The bankruptcy judges will hear motions for change of venue in cases under Title 11 and in proceedings arising under Title 11 or arising in or related to a case under Title 11 and will submit to the district court a report and recommendation containing proposed findings of fact and conclusions of law. The clerk of the bankruptcy court will serve forthwith a copy of the report and recommendation on the parties to the proceeding. Within ten days after being served with a copy of the report and recommendation, a party may serve and file with the clerk of the bankruptcy court written objections prepared in the manner provided for in Fed. R. Bank. P. 9033(b). The bankruptcy court may extend the time for filing objections Fed. R. Bank. P. 9033(c). The district court will enter any final order respecting motions to transfer venue under Fed. R. Bank. P. 9033.

DUCivR 83-7.2 BANKRUPTCY - TRANSFER OF BANKRUPTCY CASES OR PROCEEDINGS TO THE DISTRICT COURT

A case or adversary proceeding commenced in or referred to the bankruptcy court will be transferred to the district court for disposition by a district judge as required by 28 U.S.C. § 157(d) and Fed. R. Bank. P. 5011(a) only in accordance with the following procedure:

- (a) **Motion and Grounds for Transfer.** A party seeking such transfer must file a motion in the bankruptcy court certifying one or more of the following grounds:
- (1) The adversary proceeding is a personal injury tort or a wrongful death claim within the purview of 28 U.S.C. § 157(b)(5).
 - (2) Resolution of the adversary proceeding requires consideration of both Title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce, and must be withdrawn to the district court under 28 U.S.C. § 157(d).
 - (3) Cause exists, within the contemplation of 28 U.S.C. § 157(d), for the withdrawal of the case or adversary proceeding to the district court. The alleged cause must be specified.
- (b) **Time for Making a Motion to Withdraw in Case.** A motion to withdraw the reference in a case may be made at any time.
- (c) **Time for Making a Motion to Withdraw in Adversary Proceeding.** In an adversary proceeding of the kind designated in subsection (a)(1) above, the motion may be filed at any time, or a bankruptcy judge on the court's own motion may at any time order the matter transferred to the district court for disposition.
- (d) **Motions on Adversary Proceedings Removed Under 28 U.S.C. § 1452.** In an adversary proceeding other than the kind designated in subsection (a)(1) above that has been removed under 28 U.S.C. § 1452, the removing party must file an appropriate motion within twenty (20) days after the removal; other parties must file such motion within twenty (20) days after being served with summons or notice.
- (e) **Motions on Other Adversary Proceedings.** In all other adversary proceedings if the movant is an original plaintiff the motion must be filed within twenty (20) days after the proceeding is commenced. If the movant is an original defendant, intervenor, or an added

party, the motion must be filed within twenty (20) days after the movant has entered an appearance or been served with summons or notice.

- (f) **Transmittal of Motion to District Court.** A certified copy of the motion will be transmitted by the clerk of the bankruptcy court to the clerk of the district court. The district court will hear the motion in accordance with 28 U.S.C. § 157(d) and Fed. R. Bank. P. 5011(a). The effect of such a motion is governed by Fed. R. Bank. P. 5011(c).

DUCivR 83-7.3 BANKRUPTCY - DETERMINATION OF PROCEEDINGS AS "NON-CORE"

A particular proceeding will be determined to be "non-core" under 28 U.S.C. § 157(b) only if a bankruptcy judge so determines sua sponte or rules on a motion of a party filed under 28 U.S.C. § 157(b)(3) within the time periods fixed by DUCivR 83-7.2. A determination that a related proceeding is "non-core" must be in accordance with 28 U.S.C. § 157(b).

DUCivR 83-7.4 BANKRUPTCY - LOCAL BANKRUPTCY RULES OF PRACTICE

Under Fed. R. Civ. P. 83 and Fed. R. Bank. P. 9029, the district court authorizes the bankruptcy court to adopt rules of practice not inconsistent with Title 11 and Title 28 of the United States Code, the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, and the District Court Rules of Practice of the United States District Court for the District of Utah.

Such rules of practice will (i) be subject to approval, ratification, or modification by the district court and, (ii) upon such approval, ratification, or modification, be promulgated and applied uniformly by each of the bankruptcy court judges in this district.

DUCivR 83-7.5 BANKRUPTCY - JURY TRIALS IN BANKRUPTCY COURT

Under 28 U.S.C. §157(e), the district court authorizes and directs the bankruptcy judges to conduct jury trials in all proceedings in which a party is entitled to trial by jury and a jury is timely demanded, except when prohibited by applicable law. Fed. R. Civ. P. 47-51 and the applicable District Court Rules of Practice will apply to the conduct of a jury trial by a bankruptcy judge.

DUCivR 83-7.6 BANKRUPTCY - CONTEMPT OF BANKRUPTCY COURT

- (a) **Contempt of Court.** In a proceeding before a bankruptcy judge of this district, any of the following acts or conduct will constitute a contempt of that court:
- (1) Disobedience or resistance to any lawful order, process, or writ;
 - (2) Misbehavior at a hearing or other proceeding, or so near the place thereof as to obstruct the same;
 - (3) Failure to produce, after having been ordered to do so, any pertinent document;
 - (4) Refusal to appear after having been subpoenaed; refusal to take the oath or affirmation as a witness upon appearing; or refusal to be examined on unprivileged matters after having taken the oath or affirmation;
 - (5) Knowing violation of the automatic stay imposed by 11 U.S.C. § 362; or
 - (6) Any other act or conduct which, if committed before a judge of the district court, would constitute contempt of such court.
- (b) **Order to Show Cause.** Upon the commission of any such act or conduct, the bankruptcy judge may serve or cause to be served upon any person whose behavior is brought into question under this rule an order requiring such person to appear before a judge of the bankruptcy court upon a day certain to show cause why he should not be adjudged in civil contempt by reason of the facts so certified. A judge of the bankruptcy court, in a summary manner, will hear the evidence as to the act or conduct complained of and, if it is such as to warrant punishment, may punish such person in the manner and to the same extent as for a civil contempt committed before a judge of the district court.
- (c) **Service of Order, Objections, and Effective Date.** In accordance with Fed. R. Bank. P. 9020, the bankruptcy clerk will promptly serve a copy of the order of contempt upon the contemnor, and the order will be effective ten (10) days following service of said order, unless, within such ten (10) day period, the contemnor serves and files with the bankruptcy clerk objections in accordance with Fed. R. Bank. P. 9033(b), in which event the order will be reviewed as provided in Fed. R. Bank. P. 9033.
- (d) **Criminal Contempt.** Bankruptcy judges may not exercise powers of criminal contempt except when such conduct is committed in the presence of the court. Upon the commission of any such act or conduct deemed to constitute criminal contempt not committed in the

presence of the court, the bankruptcy judge may certify forthwith the facts to a judge of the district court and may serve or cause to be served upon any person whose behavior is brought into question under this rule an order requiring such person to appear before a judge of that court upon a day certain to show cause why such person should not be adjudged in contempt by reason of the facts so certified. A judge of the district court, thereupon, in a summary manner will hear the evidence as to the act or conduct complained of and, if it is such as to warrant punishment, may punish such person in the manner and to the same extent as for an equivalent contempt committed before a judge of the district court.

**DUCivR 83-7.7 BANKRUPTCY - APPEALS TO THE DISTRICT COURT FROM THE
BANKRUPTCY COURT UNDER 28 U.S.C. § 158**

- (a) **Authority.** Appeals to the United States District Court for the District of Utah from the Bankruptcy Court under 28 U.S.C. § 158 must be taken as prescribed in Part VIII of the Fed. R. Bank. P. 8001 et seq., and the U.S. Bankruptcy Appellate Panel of the Tenth Circuit Local Rules.
- (b) **Failure to Designate Record or State Issues on Appeal Under Bankruptcy Rule 8006.** Where, after an appeal to the United States District Court has been noted, the appellant fails to designate the contents of the record on appeal or to file a statement of the issues to be presented on appeal within the time required by Fed. R. Bank. P. 8006:
- (1) **Transmission of Record.** The bankruptcy clerk will promptly forward to the district court clerk a copy of the order or judgment appealed from and the notice of appeal.
- (2) **Dismissal of Appeal.** The district court, upon motion of the appellee filed with the district court clerk, or upon its own order, may dismiss the appeal.
- (c) **Failure to Effect Timely Service of Process Under Fed. R. Bank. P. 8009.** Where, after an appeal has been noted and the appellant has complied with Fed. R. Bank. P. 8006, the appellant fails to serve and file his brief within the time required by Fed. R. Bank. P. 8009, the district court, upon motion of the appellee filed with the clerk of the district court, or upon its own order, may dismiss the appeal.

***FED. R. CIV. P. 84
FORMS***

No corresponding local rule.

***FED. R. CIV. P. 85
TITLE***

No corresponding local rule.

***FED. R. CIV. P. 86
EFFECTIVE DATE***

DUCivR 86-1 EFFECTIVE DATE

These rules are effective April 1, 2005.

<p><i>FED. R. CRIM. P. 1</i> <i>SCOPE</i></p>

DUCrimR 1-1 SCOPE AND AVAILABILITY; AMENDMENTS; PRIOR RULES

These rules apply in all criminal proceedings conducted in the District of Utah. These rules, as amended and with appendices, are made available as specified in DUCivR 1-1(a). Notice of amendments to these rules and opportunity to comment is governed by DUCivR 1-1(b). The relationship of these rules to rules previously promulgated by this court and the application of these rules to criminal proceedings pending at the time they take effect are governed by DUCivR 81-1(b).

DUCrimR 1-2 SANCTIONS FOR CRIMINAL RULE VIOLATIONS

The court, on its own initiative, may impose sanctions for violation of these criminal rules. Sanctions may include, but are not limited to, the assessment of costs, attorneys' fees, fines, or any combination of these, against an attorney or a party.

***FED. R. CRIM. P. 2
PURPOSE AND CONSTRUCTION***

No corresponding local rule.

***FED. R. CRIM. P. 3
THE COMPLAINT***

No corresponding local rule.

***FED. R. CRIM. P. 4
ARREST WARRANT OR SUMMONS UPON COMPLAINT***

No corresponding local rule.

<p style="text-align: center;"><i>FED. R. CRIM. P. 5</i> <i>INITIAL APPEARANCE BEFORE THE MAGISTRATE JUDGE</i></p>
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DUCrimR 5-1 INITIAL APPEARANCE OF PERSONS UNDER ARREST

When the marshal receives custody of any person under arrest, whether charged in this district or elsewhere, the marshal must promptly inform the magistrate judge and the United States attorney's office. The magistrate judge will promptly schedule an appearance of the arrested person.

DUCrimR 5-2 PRETRIAL SERVICES REPORT

Whenever the United States requests the detention of a defendant, or where there is a likelihood that a defendant may be detained, the magistrate judge will request a pretrial services report on the defendant pursuant to 18 U.S.C. § 3154.

***FED. R. CRIM. P. 5.1
PRELIMINARY EXAMINATION***

No corresponding local rule.

***FED. R. CRIM. P. 6
THE GRAND JURY***

DUCrimR 6-1 RETURNS OF GRAND JURY INDICTMENTS

In accordance with Fed. R. Crim. P. 6(f), all grand jury indictments must be returned to a United States district or magistrate judge in open court. The indictments will be filed immediately with the clerk of court, and the defendants will be scheduled to appear before the magistrate judge for arraignment.

FED. R. CRIM. P. 7
THE INDICTMENT AND THE INFORMATION

No corresponding local rule.

FED. R. CRIM. P. 8
JOINDER OF OFFENSES AND OF DEFENDANTS

No corresponding local rule.

<p style="text-align: center;">FED. R. CRIM. P. 9 WARRANT OR SUMMONS UPON INDICTMENT OR INFORMATION</p>

**DUCrimR 9-1 ISSUANCE OF ARREST WARRANTS ON COMPLAINTS,
INFORMATION, AND INDICTMENTS**

- (a) **Summons or Warrant Request Upon Indictment, Information, or Complaint.** When a complaint is filed under Fed. R. Crim. P. 4(a), a summons request may be made either orally or in writing. A summons must be issued upon the filing of an indictment or information unless the government (i) submits to the court a written request for a warrant or (ii) specifically requests no service of process. A warrant request must include a brief statement of the facts justifying the arrest of the defendant. A warrant may be issued on an information only if it is accompanied by a written probable cause statement given under oath.
- (b) **Warrant Upon Failure to Appear.** If a defendant fails to appear in response to a summons, a warrant must be issued if, prior to issuing the warrant, the assigned district judge or magistrate judge is satisfied either (i) that the defendant received actual notice of the hearing; or (ii) that it is impractical under the circumstances to secure the defendant's appearance by way of summons.
- (c) **Use of Form AO 257.** Any request for a summons or a warrant should be indicated as additional information on Form AO 257 (*Defendant Information Relative to a Criminal Action*) that is required as part of the filing of a criminal action in the court. Copies of the form are available from the clerk of court.

***FED. R. CRIM. P. 10
ARRAIGNMENT***

No corresponding local rule.

***FED. R. CRIM. P. 11
PLEAS***

DUCrimR 11-1 PLEA AGREEMENTS

All plea agreements must be in writing and signed by counsel and the defendant. The plea agreement must be accompanied by a written stipulation of facts relevant to a plea of guilty which, if appropriate, includes the amount of restitution and a list of victims. If the agreement involves the dismissal of other charges or stipulates that a specific sentence is appropriate, the court will review and consider the presentence report before accepting or rejecting the plea agreement.

See DUCrimR 57-3 for filing and consolidation of cases involving plea bargains.

FED. R. CRIM. P. 12
PLEADINGS AND MOTIONS BEFORE TRIAL; DEFENSES AND OBJECTIONS

DUCrimR 12-1 PRETRIAL MOTIONS: TIMING, FORM, HEARINGS, MOTIONS TO SUPPRESS, CERTIFICATION, AND ORDERS

- (a) **Timing.** Pretrial motions must be made prior to arraignment or as soon thereafter as practicable but not later than ten (10) days before trial, or at such other time as the court may specify. At the arraignment, the magistrate judge may set, at the discretion of the district judge, a cutoff date for filing pretrial motions.
- (b) **Form.** Unless otherwise ordered by the court or specified in this rule, pretrial motions, responses, and memoranda must comply with DUCivR 7-1 governing motions and memoranda. Such motions must succinctly, but without argument, state the specific grounds for the relief sought. Except for suppression motions, if the motion is based on supporting claims of fact, affidavits addressing the factual basis for the motion must accompany the motion. The opposing party may file with its response counter-affidavits. The court, in its discretion, may set a hearing for any such motion.
- (c) **Notification of Oral Testimony.** When filing a pretrial motion or response that requires a hearing at which oral testimony is to be offered, the moving or responding attorney must (i) so state in writing; (ii) indicate the names of witnesses, if known; and (iii) estimate the time required for presentation of such testimony. The opposing attorney must give written notice of rebuttal witnesses and estimate the time required for rebuttal.
- (d) **Motion to Suppress Evidence.** A motion to suppress evidence, for which an evidentiary hearing is requested, shall state with particularity and in summary form without an accompanying legal brief the following: (i) the basis for standing; (ii) the evidence for which suppression is sought; and (iii) a list of the issues raised as grounds for the motion. Unless the court otherwise orders, neither a memorandum of authorities nor a response by the government is required. At the conclusion of the evidentiary hearing, the court will provide reasonable time for all parties to respond to the issues of fact and law raised in the motion.

- (e) **Certification by Government.** Where a statute or court requires certification by a government official about the existence of evidence, such certification must be in writing under oath and filed with the clerk of court.
- (f) **Preparation and Entry of Order.** When the court orders appropriate relief on a pretrial motion on behalf of any party, the prevailing party must present for the court's review and signature a proposed written order specifying the court's ruling or disposition. Unless otherwise determined by the court, proposed orders must be served upon all counsel for all parties for review and approval as to form prior to being submitted to the court for review and signature. Approval will be deemed waived if no objections have been filed with the clerk within five (5) days after personal service or eight (8) days after service by mail.

See DUCrimR 47-1, Motions, Supporting Memoranda, and Use of Unpublished opinions; DUCrimR 49-1, Filing of Papers; DUCrimR 56-1, Office of Record; Court Library; Hours and Days of Business; and DUCrimR 57-1, General Format of Papers.

FED. R. CRIM. P. 12.1
NOTICE OF ALIBI

No corresponding local rule; however, see DUCrimR 16-1(b) for reference to alibi witness.

FED. R. CRIM. P. 12.2
NOTICE OF INSANITY DEFENSE OR EXPERT TESTIMONY OF DEFENDANT'S
MENTAL CONDITION

No corresponding local rule; however, see DUCrimR 16-1(b) for mental illness experts.

FED. R. CRIM. P. 12.3
NOTICE OF DEFENSE BASED UPON PUBLIC AUTHORITY

No corresponding local rule.

FED. R. CRIM. P. 13
TRIAL TOGETHER OF INDICTMENTS OR INFORMATION

No corresponding local rule; however, see DUCrimR 57-3 for consolidation of criminal cases.

FED. R. CRIM. P. 14
RELIEF FROM PREJUDICIAL JOINDER

No corresponding local rule.

FED. R. CRIM. P. 15
DEPOSITIONS

No corresponding local rule.

FED. R. CRIM. P. 16
DISCOVERY AND INSPECTION

DUCrimR 16-1 DISCOVERY

- (a) **Rules Governing Discovery Motion Practice.** Motions for discovery must be made in compliance with the Federal Rules of Criminal Procedure governing motion practice in criminal cases and with these District Court Rules of Practice. Specific discovery conditions may be stipulated to by the parties. Prior to filing discovery requests or motions with the court, counsel for the government and for the defendant must attempt to agree to a mutually acceptable pretrial exchange of discovery. If such an agreement is reached, counsel for both parties must sign and file with the court a joint discovery statement describing the terms and conditions of the agreement.
- (b) **Alibi Witnesses and Mental Illness Experts.** Alibi witness discovery is governed by Fed. R. Crim. P. 12.1 rather than by this criminal rule. Expert testimony discovery regarding a defendant's mental condition is governed by Fed. R. Crim. P. 12.2(b) rather than by this rule.
- (c) **Motions Pursuant to Fed. R. Crim. P. 16.** A discovery request under Fed. R. Crim. P. 16 must be made not later than the date set by the district or magistrate judge. The request must be in writing and state with particularity the material sought. Unless otherwise ordered by the court, the party obligated to disclose under Fed. R. Crim. P. 16 must comply promptly but not fewer than fourteen (14) days prior to trial. All exhibits subject to copying under Fed. R. Crim. P. 16 must be returned to the party from whom they were obtained prior to trial. As set forth in section (h) below, the party obligated to disclose under Fed. R. Crim. P. 16 must file a notice of compliance specifying with particularity how the request for discovery was satisfied. The government may not require the defendant or the defendant's attorney to withdraw or refrain from making a discovery request as a condition to an open-file policy. Where the government agrees to an open-file policy in a particular case, the government nevertheless must comply with the notification of compliance requirement set forth in section (h) below. Where the government agrees to an open-file policy, the defendant must provide reciprocal discovery as required by Fed. R. Crim. P. 16.

- (d) **Motions Not Governed by Fed. R. Crim. P. 16.** Motions for discovery, other than those under Fed. R. Crim. P. 16, must be in writing and specify with particularity the legal and factual basis for such discovery. Motions for discovery based upon constitutional or statutory grounds must specify with certainty the requested information and may be supported by affidavits filed with the motion. If the court grants a motion for discovery, or if the parties agree to production of the requested material, a notification of compliance with the discovery request, as set forth in section (h) below, must be made as soon as discovery is completed.
- (e) **Jencks Act Discovery.** Where the government agrees, under an open-file policy or otherwise, to provide pretrial discovery of witness statements, or where the court orders production of grand jury materials or witness statements in accordance with 18 U.S.C. § 3500 et seq., and Fed. R. Crim. P. 26.2, the defendant must provide reciprocal pretrial discovery of witness statements to the government.
- (f) **Discovery Ordered by Pretrial Conference.** The court may order discovery as it deems proper under Fed. R. Crim. P. 17.1. A notification of compliance, as set forth in section (h) below, with any such discovery order, must be made by the party required to make disclosure.
- (g) **Motions for Protective or Modifying Orders.** Motions for protective or modifying orders may be made after a request, motion, or order of discovery has been made. Such motions must be in writing and upon notice, and must specify with particularity the basis upon which relief is sought.
- (h) **Notification of Compliance.** The notification of compliance must specify with particularity the matter produced for discovery. If the notification of compliance does not accurately describe the materials or information produced, the opposing attorney must file with the court an objection stating in detail how the notification is inaccurate or incomplete to preserve the party's rights to object to the adequacy of discovery provided.

DUCrimR 16-2 DISCOVERY - SEARCH WARRANTS

The defendant may demand, at any time after the filing of the complaint, information, or indictment and prior to the date set for the filing of motions, that the government provide information as to whether any evidence obtained or derived from the execution of a search warrant will be used at trial against that defendant. Upon such demand, the government must provide to that defendant copies of all search warrants, affidavits, or records of warrants relevant to or connected with the prosecution of that defendant and must file copies of the same with the clerk of court. The government also must give written notice to that defendant of what evidence obtained or derived from the execution of any search warrant the government intends to offer at trial against that defendant. If the search warrants, affidavits, or records of warrants are under seal, the government must so state in response to a demand for disclosure. On said response, the defendant, in order to obtain disclosure of said documents, must file a motion to unseal the documents. Where the government objects to the unsealing, it must file an appropriate and timely response, and a hearing, if necessary, will be set for the court to hear the motion and objections. Where no objections to unsealing the documents are filed, the defendant must prepare an order for entry by the court.

FED. R. CRIM. P. 17
SUBPOENA

**DUCrimR 17-1 SEALING OF EX PARTE MOTIONS AND ORDERS IN CRIMINAL
JUSTICE ACT CASES RELATING TO TRIAL SUBPOENAS AND
APPOINTMENT OF EXPERTS**

Unless otherwise directed by the court, the clerk will seal at the time of filing all ex parte motions and orders in Criminal Justice Act (CJA) cases for issuance of trial subpoenas, appointment of experts, authorization of travel, and other extra-ordinary expenses. Copies of such orders, when executed, will be served by the clerk only on the party that made the motion. The clerk will retain such motions and orders under seal until the case proceeds to trial or a judgment is issued.

See DUCrimR 16-1 for discovery ordered by pretrial conference and DUCrimR 44-1 for payment of services.

FED. R. CRIM. P. 18
PLACE OF PROSECUTION AND TRIAL

No corresponding local rule.

<p style="text-align: center;"><i>FED. R. CRIM. P. 20</i> <i>TRANSFER FROM THE DISTRICT FOR PLEA AND SENTENCE</i></p>

DUCrimR 20-1 TRANSFERS UNDER FED. R. CRIM. P. 20

Where a criminal case against a named defendant who has not been sentenced is pending in this jurisdiction, and the United States attorney receives notification that a criminal case pending in another jurisdiction against the same defendant is to be transferred to this jurisdiction under Fed. R. Crim. P. 20, the United States attorney must promptly notify the clerk of court. On receiving the case file from the transferring jurisdiction, the clerk will open a new case under the Rule 20 transfer and assign it to the judge to whom the pending case is assigned.

DUCrimR 20-2 TRANSFER TO THE DISTRICT FOR PLEAS OR SENTENCING

When the United States attorney's office receives a request under Fed. R. Crim. P. 20 (b) from any defendant for transfer of a case for prosecution to the District of Utah, the United States attorney's office must promptly notify the clerk and process the transfer documents to ensure prompt transmission of the case to this court. When the clerk of court receives the file from the district of origin, the clerk will open a new case, assign a judge pursuant to DUCrimR 57-2, and deliver the file to the magistrate judge for processing. Thereafter, the magistrate judge will promptly calendar the case for arraignment to minimize delay. No scheduling order will be entered prior to the transfer of jurisdiction to this court.

FED. R. CRIM. P. 21
TRANSFER FROM THE DISTRICT FOR TRIAL

No corresponding local rule.

FED. R. CRIM. P. 22
TIME OF MOTION TO TRANSFER

No corresponding local rule.

FED. R. CRIM. P. 23
TRIAL BY JURY OR BY THE COURT

DUCrimR 23-1 NUMBER OF JURORS AND ALTERNATES IN CRIMINAL CASES

- (a) **Number of Jurors.** In all criminal cases, absent a stipulation of the parties to the contrary, the trial jury will consist of twelve (12) members, and the agreement of all twelve (12) members will constitute the verdict of the jury. Although the court may excuse jurors from service during trial or deliberation for good cause, the verdict still must be unanimous, and no verdict may be taken from a jury of fewer than eleven (11) members.
- (b) **Number of Alternate Jurors.** In all criminal actions tried by a jury, the court may direct that one (1) to six (6) jurors in addition to the regular panel be called and impaneled to sit as alternate jurors.

FED. R. CRIM. P. 24
TRIAL JURORS

DUCrimR 24-1 IMPANELMENT AND SELECTION OF JURY

- (a) **Impanelment and Selection of Jury.** Procedures and requirements regarding the impanelment and selection of a criminal jury are the same as those that apply to a civil jury. They are stated in DUCivR 47-1.
- (b) **Use of Alternate Jurors.** Alternate jurors in the order in which they are called will replace jurors who, prior to the time the jury retires to consider its verdict, are disqualified from service or, in the judgment of the court, are unable to continue to serve. Alternate jurors will (i) be drawn in the same manner, (ii) have the same qualifications, (iii) be subject to the same examination and challenges, (iv) take the same oath, and (v) have the same functions, powers, facilities, and privileges as principal jurors. Alternate jurors who do not replace principal jurors will be discharged when the jury retires to consider its verdict.

See DUCrimR 57-8 for communications with jurors before, during, and after trial.

***FED. R. CRIM. P. 25
JUDGE; DISABILITY***

No corresponding local rule.

***FED. R. CRIM. P. 26
TAKING OF TESTIMONY***

No corresponding local rule.

***FED. R. CRIM. P. 26.1
DETERMINATION OF FOREIGN LAW***

No corresponding local rule.

***FED. R. CRIM. P. 26.2
PRODUCTION OF WITNESS STATEMENTS***

No corresponding local rule; however, see DUCrimR 16-1(e) for Jencks Act discovery.

***FED. R. CRIM. P. 26.3
MISTRIAL***

No corresponding local rule.

FED. R. CRIM. P. 27
PROOF OF OFFICIAL RECORD

No corresponding local rule.

FED. R. CRIM. P. 28
INTERPRETERS

No corresponding local rule.

FED. R. CRIM. P. 29
MOTION FOR JUDGMENT OF ACQUITTAL

No corresponding local rule.

FED. R. CRIM. P. 29.1
CLOSING ARGUMENT

No corresponding local rule.

**FED. R. CRIM. P. 30
INSTRUCTIONS**

DUCrimR 30-1 INSTRUCTIONS TO THE JURY

- (a) **Written Proposed Jury Instructions.** Unless the court otherwise orders, two (2) originals and one (1) copy of proposed jury instructions must be prepared, served, and filed with the court a minimum of two (2) full business days prior to the day the case is set for trial. The court in its discretion may receive additional written requests during the course of the trial. One (1) original and one (1) copy of each proposed instruction must (i) be numbered, (ii) indicate the identity of the party presenting the same, and (iii) contain citations of authority. A second original of each proposed instruction must be without number or citation. Individual instructions must embrace one (1) subject only, and the principle of law embraced in any instruction must not be repeated in subsequent instructions. Unless the court otherwise orders, service copies of proposed instructions must be received by the adverse party or parties at least two (2) full business days prior to the day the case is set for trial.
- (b) **Ruling on Requests.** Prior to the argument of counsel, the court, in accordance with Fed. R. Crim. P. 30, will inform counsel of the court's proposed rulings in regard to requests for instructions. Counsel who believe the court has provided insufficient information under Fed. R. Crim. P. 30 should so inform the court on the record prior to final argument.
- (c) **Objections or Exceptions to Final Instructions.** The jury may be instructed orally or in writing as the court determines. As provided in Fed. R. Crim. P. 30, objections to a charge or objections to a refusal to give instructions as requested in writing must be made by informing the court before the jury has retired, but out of the hearing of the jury. Such objections must (i) identify the objectionable parts of the charge or the refused instructions, and (ii) describe the nature and the grounds of objection. Before the jury has left the box, but before formal exceptions to the charge are taken, counsel may alert the court to any corrections to or explanations of the instructions that inadvertently may have been omitted.

FED. R. CRIM. P. 31
VERDICT

No corresponding local rule.

FED. R. CRIM. P. 32
SENTENCE AND JUDGMENT

DUCrimR 32-1 PRESENTENCE INVESTIGATION REPORTS: TIME, OBJECTIONS, SUBMISSION, RESOLUTION OF DISPUTES

- (a) **Restrictions on Disclosure of Sentencing Recommendations.** Copies of the presentence report furnished under Fed. R. Crim. P. 32(b)(6) will exclude the probation officer's recommendation.
- (b) **Position Statements.** After disclosure of the presentence report to the parties, but no later than seven (7) days before sentencing, counsel for the parties must file, in accordance with the United States Sentencing Commission Guidelines Manual, §§ 6A1.2 and 6A1.3, a pleading entitled "Position of Party with Respect to Sentencing Factors." The pleading must be accompanied by a written statement that the party has conferred in good faith with opposing counsel and with the probation officer in an attempt to resolve any disputed matters.
- (c) **Disclosure of Presentence Report .** Except as otherwise provided by Fed. R. Crim. P. 32(b)(6), presentence reports and confidential records maintained by the United States probation office will not be released except by order of the court.
 - (1) **Disclosure to Correctional and Treatment Agencies.** Probation reports, including the presentence report, may be forwarded routinely to the United States Sentencing Commission, the Federal Bureau of Prisons, federal contract facilities, the United States Parole Commission, courts of appeals and respective parties, as well as other United States probation offices in accordance with federal probation system policies and procedures. The probation office may prepare a summary of background material in cases for other correctional or treatment agencies and may review the appropriate file with professional staff members from those agencies upon receipt of a Consent to Release Information form signed by the defendant.
 - (2) **Disclosure in 28 U.S.C. § 2255 Matters.** Such reports may be reviewed by the court and authorized court personnel in consideration of matters under 28 U.S.C. § 2255.

FED. R. CRIM. P. 32.1
REVOCATION OR MODIFICATION OF PROBATION OR SUPERVISED RELEASE

No corresponding local rule.

FED. R. CRIM. P. 33
NEW TRIAL

No corresponding local rule.

FED. R. CRIM. P. 34
ARREST OF JUDGMENT

No corresponding local rule.

FED. R. CRIM. P. 35
CORRECTION OR REDUCTION OF SENTENCE

No corresponding local rule.

FED. R. CRIM. P. 36
CLERICAL MISTAKES

No corresponding local rule.

FED. R. CRIM. P. 38
STAY OF EXECUTION

No corresponding local rule.

FED. R. CRIM. P. 40
COMMITMENT TO ANOTHER DISTRICT

DUCrimR 40-1 REMOVAL PROCEEDINGS

- (a) **Notification of Removal.** When the United States attorney's office and the marshal receive information that a person charged in the District of Utah has been ordered removed from another district either by warrant or by a release with directions to appear in this district, they must promptly notify the magistrate judge who will calendar the matter to ensure a timely appearance of the defendant before the magistrate judge.
- (b) **Delivery of Pertinent Documents.** When the clerk of court receives any letter or documents pertaining to the removal of a person to this district from any other district, the clerk will promptly deliver the same to the magistrate judge for proper processing with notice to the U.S. attorney's office of the removal. The clerk will obtain from the removing jurisdiction all documents pertinent to the release or detention of the defendant for the magistrate judge's use in making an appropriate determination on the pretrial detention or release of the defendant.
- (c) **Warrant of Removal.** When the magistrate judge issues a warrant of removal for any person charged in another district, or when the magistrate judge releases such a person with directions to appear in the district of origin, the magistrate judge will promptly deliver the docket sheet and all related documents pertaining to the matter to the clerk of court. The clerk will promptly forward the same to the district of origin.

FED. R. CRIM. P. 40.1
REMOVAL FROM STATE COURT

No corresponding local rule.

FED. R. CRIM. P. 41
SEARCH AND SEIZURE

No corresponding local rule; however, see DUCrimR 12-1 for pretrial motions, responses, memoranda, and proposed orders.

FED. R. CRIM. P. 43
PRESENCE OF THE DEFENDANT

No corresponding local rule.

FED. R. CRIM. P. 44
RIGHT TO AND ASSIGNMENT OF COUNSEL

DUCrimR 44-1 RIGHT TO AND ASSIGNMENT OF COUNSEL

(a) Applicability. This rule applies to any person:

- (1) who is charged with a felony, misdemeanor (other than a petty offense as defined in 18 U.S.C. § 1(3) unless the defendant faces the likelihood of loss of liberty), juvenile delinquency (see 18 U.S.C. § 5034), or a violation of probation;
- (2) who is under arrest, when such representation is required by law;
- (3) who is seeking collateral relief, as provided in subsection (b) of the CJA;
- (4) who is in custody as a material witness (see subsection (g) of the CJA and 18 U.S.C. §§ 3144 and 3142(f));
- (5) who is entitled to appointment of counsel in parole proceedings under 18 U.S.C. Chapter 311;
- (6) whose mental condition is the subject of a hearing under 18 U.S.C. Chapter 313; or
- (7) for whom the sixth amendment to the Constitution requires the appointment of counsel, or for whom, in a case in which such person faces loss of liberty, any federal law requires the appointment of counsel.

(b) Services Essential to a Proper Defense. The assigned district judge or magistrate judge may authorize an appointed attorney to incur reasonable expenses for the necessary services of an investigator, for a psychiatric examination of the defendant, or for other services essential to a proper defense. The cost of such additional services must not exceed the authorized statutory maximum. A request to incur such additional expense may be made ex parte to the assigned district judge or magistrate judge by motion or petition, together with an appropriate CJA form. In addition, an order must be issued and signed by the district or magistrate judge before any additional expenses are incurred. The assigned judge also may order that a subpoena be issued on behalf of an indigent defendant under DUCrimR 17-1.

(c) Post-Trial Duties of Appointed Attorneys. The duties of an appointed attorney after the

trial include the following:

- (1) the attorney must inform the defendant of the right to appeal;
- (2) if, after consultation with the attorney, the defendant desires to appeal, the attorney must file a notice of appeal, designate the appropriate portions of the record, make all arrangements necessary to order a transcript of needed testimony, and complete all other requirements necessary to perfect the appeal, including making and filing a docketing statement; and,
- (3) if the attorney who represented the defendant at trial wishes to continue to represent the defendant in an appeal, the attorney must notify the clerk of the United States Court of Appeals for the Tenth Circuit and take proper steps to obtain appointment from the court of appeals as counsel for the defendant on appeal.

- (d) **Payment of Services.** An attorney appointed to represent an indigent defendant under the Criminal Justice Act, 18 U.S.C. § 3006A, is responsible for submitting, promptly after the attorney's duties have been terminated, properly completed vouchers and required support documentation on appropriate CJA forms for services rendered by the attorney or others. In cases involving extended services, the court, upon application, may recommend payment in excess of the statutory maximum. All vouchers seeking payments in excess of the statutory maximum must be accompanied by certified time sheets or other evidence setting forth in detail the time spent on the case. Appointments of attorneys for indigent defendants must be in accordance with the CJA plan for the District of Utah.

DUCrimR 44-2 CONSTRAINTS ON JOINT REPRESENTATION

- (a) **Statement of Policy.** An attorney, including attorneys who are associated in the practice of law, must avoid a conflict of interest in undertaking representation. In particular, an attorney must avoid a conflict of interest when representing joint defendants, targets of a grand jury investigation, or potential government witnesses in the same criminal matter, whether before or after any formal charges have been filed. Except as provided below, an attorney may not represent more than one defendant or target in the same criminal matter, nor may an attorney represent a defendant or target in a criminal matter if the attorney has represented or is

representing individuals who are potential government witnesses in the same matter. An attorney may not represent joint defendants if the attorney, in making a calculation of any applicable sentencing guideline, may be required to contend for differing levels of culpability of the various persons represented.

- (b) **Motion, Hearing, and Order.** An attorney who intends to represent two or more persons in the same criminal matter with potential conflicts of interest must (i) conform to the provisions of Fed. R. Crim. P. 44(c), and (ii) file with the court a motion and proposed order permitting joint representation. The attorney must certify to the court that, after careful investigation of potential conflicts of interest, it is clear that no actual conflict exists or is foreseeable. The attorney also must file with any motion for such an order a written certification by each person to be represented, giving informed consent to such joint representation and waiving the right to separate representation and, when applicable, waiving the attorney/client privilege. A response to the motion must be filed by the government within ten (10) days. At the subsequent hearing, each defendant, target, or potential government witness subject to or affected by joint representation must be in attendance. The court will deny joint representation where a conflict exists, even if consented to by a defendant, target, or potential government witness, if such representation would be contrary to the interest of justice in the case. The government, upon becoming aware of a potential conflict of interest in the representation of a criminal defendant, must promptly notify defendant's counsel of the potential conflict. If defendant's counsel does not respond and, if necessary, resolve the conflict after such notification, the government must file a motion to inform the court.

***FED. R. CRIM. P. 45
TIME***

No corresponding local rule; however, see DUCrimR 57-4 for time limitations and procedural interval processing of criminal cases.

***FED. R. CRIM. P. 46
RELEASE FROM CUSTODY***

No corresponding local rule.

***FED. R. CRIM. P. 47
MOTIONS***

**DUCrimR 47-1 MOTIONS, SUPPORTING MEMORANDA, AND USE OF
UNPUBLISHED OPINIONS**

The preparation and filing of motions and supporting memoranda in criminal matters is governed by DUCivR 7-1. The use of unpublished decisions in criminal motions and supporting memoranda is governed by DUCivR 7-2.

***FED. R. CRIM. P. 48
DISMISSAL***

No corresponding local rule.

<p style="text-align: center;"><i>FED. R. CRIM. P. 49</i> <i>SERVICE AND FILING OF PAPERS</i></p>

DUCrimR 49-1 FILING OF PAPERS

The filing of pleadings and papers in criminal matters is governed by DUCivR 5-1(a) and (b).

DUCrimR 49-2 FILING CRIMINAL CASES AND DOCUMENTS UNDER COURT SEAL

- (a) **Filing of Cases Under Seal.** On request of the United States attorney, made at the time a complaint or information is filed or a grand jury indictment is returned, that all or a portion of the documents in a criminal case be sealed, the clerk will seal the case or documents unless the court otherwise directs. Sealed criminal cases will be listed on the clerk's case index as *U.S.A. vs. Sealed Defendant*. Unless otherwise ordered by the court or, upon referral, a magistrate judge on a showing of good cause by the United States attorney or a defendant, sealed cases or documents will be unsealed when the last defendant appears in this district before the magistrate judge.
- (b) **Filing of Documents Under Seal.** On motion of any party and a showing of good cause, the court may order that all or a portion of the documents filed in a case be sealed. DUCivR 5-2 (c) and (d) governing the procedure for filing documents under seal and access to sealed documents apply in criminal cases. A district or magistrate judge may order that, in the interests of justice, critical documents in sensitive criminal matters be placed and remain under court seal for extended periods.

FED. R. CRIM. P. 50
CALENDARS; PLAN FOR PROMPT DISPOSITION

No corresponding local rule.

FED. R. CRIM. P. 51
EXCEPTIONS UNNECESSARY

No corresponding local rule.

FED. R. CRIM. P. 52
HARMLESS ERROR AND PLAIN ERROR

No corresponding local rule.

FED. R. CRIM. P. 53
REGULATION OF CONDUCT IN THE COURT ROOM

DUCrimR 53-1 COURTROOM PRACTICES AND PROTOCOL

The standards relating to attorney practices, protocol, and conduct when participating in civil proceedings are prescribed in DUCivR 43-1. The standards apply equally to all criminal proceedings in this district.

See DUCrimR 57-13 for cameras, recording devices, broadcasting, etc.

FED. R. CRIM. P. 54
APPLICATION AND EXCEPTION

No corresponding local rule.

FED. R. CRIM. P. 55
RECORDS

DUCrimR 55-1 ACCESS TO COURT RECORDS

Access to records related to criminal proceedings and maintained by the clerk is governed by DUCivR 79-1.

FED. R. CRIM. P. 56
COURTS AND CLERKS

DUCrimR 56-1 OFFICE OF RECORD; COURT LIBRARY; HOURS AND DAYS OF BUSINESS

For purposes of criminal matters, details regarding the office of record, U.S. Courts Library, days and hours of business, and the twenty-four (24) hour filing box are the same as those set forth in DUCivR 77-1.

<p style="text-align: center;"><i>FED. R. CRIM. P. 57</i> <i>RULES BY DISTRICT COURTS</i></p>

DUCrimR 57-1 GENERAL FORMAT OF PAPERS

All papers in criminal matters submitted to the court must conform to the format requirements of DUCivR 10-1.

DUCrimR 57-2 ASSIGNMENT OF CRIMINAL CASES

Supervision of the random assignment of criminal cases to the judges of the court is the responsibility of the chief judge and will proceed as specified in DUCivR 83-2.

DUCrimR 57-3 CONSOLIDATION AND FILING OF CRIMINAL CASES

- (a) **Pending Cases Involving Same Defendant.** Where there are two or more cases pending against the same defendant before two or more assigned judges, the United States, the defendant, or the court on its own motion, where appropriate, may move by written motion before either judge to assign the case to the judge with the low-number case.
- (b) **Filing of Information Related to New Charges Based on Plea Bargains.** When the United States, as part of a plea bargain, files an information against a defendant setting forth a charge unrelated in substance to a pending charge in a case before an assigned judge, the new information must be filed promptly with the clerk of court who will open a new criminal case and assign a judge pursuant to subsection (a) of this rule. Thereafter, the United States may make a motion for consolidation or reassignment as set forth in section (c) of this rule.
- (c) **Filing Requirements.** A motion for consolidation under Fed. R. Crim. P. 13, accompanied by a proposed order, may be filed in any one of the cases for which consolidation is being proposed. A notice of filing the motion must be filed in each other case that the party seeks to have consolidated. Both the motion for consolidation and the notice of filing must include the name and number of all cases for which consolidation is being moved.

DUCrimR 57-4 CRIMINAL CASE PROCESSING

- (a) **General Authority.** Criminal cases will be processed in accordance with the requirements of the Speedy Trial Act of 1974, 18 U.S.C. §§ 3161-3174, as amended, and the court's Revised Speedy Trial Plan.
- (b) **Arrest Date Information.** At the first court appearance of any person arrested for a federal offense not yet charged in an indictment or information, counsel for the United States will note for the record the date of the arrest. Such date will be recorded on the case docket and utilized by the clerk for initiating the Speedy Trial Act provisions with regard to time limitations and procedural intervals under 18 U.S.C. § 3161 (b). The clerk also will initiate such tracking provisions in matters involving persons served with a criminal summons, utilizing the service date of the summons.

DUCrimR 57-5 CUSTODY AND DISPOSITION OF TRIAL EXHIBITS

The custody and disposal of criminal trial exhibits and the attendant responsibilities of counsel are governed by DUCivR 83-5(a)(1), (b), and (c).

DUCrimR 57-6 SPECIAL ORDERS IN WIDELY PUBLICIZED CRIMINAL MATTERS

In a criminal matter that is likely to be widely publicized, the court, during the investigation or at any other time, may issue an order governing extrajudicial statements by parties or witnesses which have a substantial likelihood of materially influencing a criminal proceeding or of preventing a fair trial or impeding the administration of justice. The court also may issue orders concerning the seating and conduct of spectators and news representatives, or the management and sequestration of jurors or witnesses, as the interests of justice may require.

- (a) **Statement of Policy.** A government or defense attorney or member of the same firm or office as the government or defense attorney may not disseminate by means of public communication, or means which could reasonably be anticipated to become public, any information, statement, or other matter which will have a substantial likelihood of preventing a fair trial or directly impeding the due administration of justice. Court supporting personnel, including marshals, deputy clerks, court reporters, probation officers, and their staffs or office personnel (whether employees or independent contractors) may not disclose to any person, without court authorization, any opinion or information relating to a pending investigation or prosecution that is not part of the public record, including information concerning grand jury proceedings or hearings and argument held outside the presence of the public.
- (b) **Permissible Communications by Attorneys.** A government or defense attorney may:
- (1) quote without comment from the public record;
 - (2) inform the public of the general scope of an investigation or prosecution (including the name of the victim if not prohibited by law);
 - (3) warn the public of danger;
 - (4) solicit the help of the public in apprehending a suspect or fugitive or in procuring evidence;
 - (5) identify an accused by name, age, residence, occupation, and family status;
 - (6) announce the circumstances of arrest (including time, place, resistance, pursuit, use of weapons, arresting officer, length of investigation) and the seizure of physical evidence (including description of objects seized); and
 - (7) note the accused's denial of the charges and the accused's intent to seek an acquittal.
- (c) **Impermissible Communications by Attorneys.**
- (1) A government attorney must make no reference to an accused's prior criminal record, except to the extent that it may be relevant to an explanation of the charges, confessions, or results of tests, or disclose any proposed evidence which the attorney

knows or should know would not be admissible at trial, or render an opinion prior to or during trial as to the attorney's personal belief of the accused's guilt or innocence.

- (2) A defense attorney must not (i) render any personal belief or opinion prior to or during trial as to accused's guilt or innocence, (ii) make any statement attributing the commission of the crime charged to a specific person other than the defendant, or (iii) disclose evidence that the attorney knows or should know would not be admissible at trial, which evidence could materially affect the fairness of the proceedings.

- (d) **Sanctions for Rule Violation.** Any attorney who violates the provisions of sections (a) or (c) of this rule will be subject to such sanctions as the court deems just and proper. Such discipline may be entered by the court sua sponte or upon motion of a party.

DUCrimR 57-8 COMMUNICATION WITH JURORS

Communications with jurors before, during, and after criminal trials are governed by DUCivR 47-2.

DUCrimR 57-9 MOTIONS FOR POST-CONVICTION RELIEF

- (a) **Form of Motion.** All motions for post-conviction relief under 28 U.S.C. § 2255 by a person in federal custody must be in writing and in substantially the standard form prescribed by the Rules Governing Section 2255 Proceedings for the United States District Courts, as set forth following 28 U.S.C. § 2255.
- (b) **Duties of the Clerk.** The clerk of court will make blank forms available upon request and without charge. Upon receiving any motion which does not substantially comply with the prescribed form, the clerk will file the motion but notify the applicant of the requirements of this rule and provide to the applicant the correct form with instructions to complete and return it to the court.
- (c) **Service Upon the Government.** All motions filed under this rule must state with particularity the reasons for the post-conviction relief. A copy of the motion must be served upon the United States attorney's office. The district judge or magistrate judge will review the petition under Rule 4, Rules Governing Section 2255 Proceedings. If the motion

warrants a response, an order will be made requiring the United States attorney to respond to the motion and a time for reply will be set. The order may direct the United States attorney to present appropriate documentation or information on the motion.

- (d) **Assignment of Motion to Appropriate District Judge.** The clerk of court, upon receipt of any motion filed under this rule, will notify the district judge who originally sentenced the applicant or, if that judge is unavailable, the clerk will so notify the judge otherwise assigned to the case.
- (e) **Discretionary Assignment of Motion to Magistrate Judge.** The court may refer the motion to a magistrate judge for investigation, recommendation, or final determination.
- (f) **Discretionary Hearing.** Unless otherwise ordered by the court upon motion by the applicant, no oral submission or hearing will be held upon the motion.
- (g) **Authority for Proceedings.** The proceedings on a motion under 28 U.S.C. § 2255 will be processed in conformity with statute and the Rules Governing Section 2255. The motion must state all bases for relief. Successive petitions may be denied under Rule 9, Rules Governing Section 2255 Proceedings.

DUCrimR 57-10 RELIEF FROM STATE DETAINER

No petition lodged or filed by a prisoner under the provisions of the Interstate Agreement on Detainers (18 U.S.C., Appendix III) for relief of any sort from the effect of a state detainer will be entertained unless (i) the petitioner, at least 180 days prior to the date of lodging or filing a petition, transmits, through the warden or other official having petitioner's custody, to the prosecuting officer of the jurisdiction in which the case giving rise to the detainer is pending, and to the appropriate court, a written notice of the place of imprisonment and the petitioner's request for a final disposition of the indictment, information, or complaint upon which the detainer is based; and (ii) the petitioner has not been brought to trial on such indictment, information, or complaint.

DUCrimR 57-11 STIPULATIONS

No stipulation between the parties modifying a prior order of the court or affecting the course of conduct of any criminal proceeding will be effective until approved by the court.

DUCrimR 57-12 ATTORNEYS

All procedural matters relating to attorney admissions, registration, appearance and withdrawal, discipline and removal, and student practice in criminal matters are governed by the applicable civil rules, DUCivR 83-1.1 - 83-1.6.

DUCrimR 57-13 CAMERAS, RECORDING DEVICES, AND BROADCASTS

The use of cameras, recording devices, and broadcasts in criminal matters is governed by DUCivR 83-3.

DUCrimR 57-14 COURT SECURITY

Matters regarding court security during all criminal proceedings and otherwise are governed by DUCivR 83-4.

DUCrimR 57-15 MAGISTRATE JUDGE AUTHORITY IN CRIMINAL CASES

(a) General Authority. Unless otherwise ordered by the court, magistrate judges are authorized to:

- (1) accept criminal complaints, determine whether probable cause exists, and issue arrest warrants, summons, and search warrants, including those based on oral or telephonic testimony;
- (2) administer oaths and affirmations; take acknowledgments, affidavits, and depositions;
- (3) conduct initial appearance proceedings, inform defendants of their rights, set bail, and impose conditions of release;
- (4) dismiss complaints in criminal proceedings prior to indictment or information upon motion of the United States attorney;
- (5) appoint counsel for indigent defendants,
- (6) conduct detention hearings;

- (7) issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, and other orders necessary to secure the presence of parties, witnesses or evidence for court proceedings;
 - (8) order the forfeiture or exoneration of bonds;
 - (9) issue warrants of removal;
 - (10) conduct hearings under Fed. R. Crim. P. 20;
 - (11) conduct full preliminary examinations;
 - (12) set bail and appoint counsel if appropriate, for material witnesses;
 - (13) issue orders (i) authorizing the installation of devices such as traps/traces and pen registers, and (ii) directing a communication common carrier, as defined in 47 U.S.C. § 153(h) including a telephone company, to provide assistance to a named federal investigative agency in accomplishing the installation of traps, traces and pen registers;
 - (14) receive grand jury returns and authorize the issuance of arrest warrants or summons thereupon; and
 - (15) take a plea of guilty on (i) appropriate reference from the district judge assigned to the case, and (ii) the consent of the parties.
- (b) **Criminal Pretrial Authority.** After an indictment or felony information has been filed and assigned to a district judge under DUCrimR 57-2, magistrate judges are authorized to:
- (1) conduct arraignments;
 - (2) accept or enter not guilty pleas;
 - (3) order presentence reports;
 - (4) hear and rule on motions to modify bail and/or conditions of release; and,
 - (5) conduct scheduling hearings pursuant to Fed. R. Crim. P. 17.1.
- (c) **Authority to Conduct Hearings, Prepare Report and Recommendations, and Determine Preliminary Matters.** Upon entry by a district judge of an order of reference, magistrate judges are authorized to (i) hear motions to dismiss or quash an indictment and motions to suppress evidence, and (ii) submit to the assigned district judge a report with proposed findings of fact and recommendations. Magistrate judges may determine

preliminary matters and conduct evidentiary hearings or other proceedings commensurate with the exercise of authority conferred by this section.

- (d) **Criminal Trial Authority.** Magistrate judges are authorized (i) to try persons accused of and (ii) to sentence persons convicted of misdemeanors committed within this district in accordance with 18 U.S.C. § 3401 and as otherwise provided by statute.
- (e) **Extradition Proceedings.** Unless otherwise ordered by a judge of this court, when a foreign government requests the arrest of a fugitive pursuant to a treaty or convention for extradition between the United States and the requesting country and on the basis of a complaint under oath, a magistrate judge of this court is authorized to issue warrants and conduct extradition proceedings in accordance with the provisions set forth in 18 U.S.C. § 3184.

DUCrimR 57-16 APPEAL OF MAGISTRATE JUDGE ORDERS

- (a) **Preliminary Criminal Matters.**
 - (1) **Release and Detention Orders.** Any party is entitled to appeal a magistrate judge's order releasing or detaining a defendant under 18 U.S.C. §§ 3143 et seq. The appeal will be a timely scheduled de novo review by the assigned district judge. Where no judge has been assigned, the clerk will assign the appeal under DUCrimR 57-2.
 - (2) **Other Orders and Rulings.** Appeals of magistrate judge rulings on criminal motions will be conducted in the same manner as appeals of magistrate judge rulings on civil motions.
- (b) **Stays of Magistrate Judge Orders.** Pending review of objections, motions for stay of magistrate judge orders initially must be addressed to the magistrate judge.
- (c) **Final Judgments.** The appeal of final judgments issued by magistrate judges in misdemeanors and petty offenses is governed by DUCrimR 58-1.

<p style="text-align: center;">FED. R. CRIM. P. 58 PROCEDURE FOR MISDEMEANORS AND OTHER PETTY OFFENSES</p>
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**DUCrimR 58-1 APPEALS FROM MAGISTRATE JUDGE DECISIONS IN
MISDEMEANORS AND PETTY OFFENSE CASES.**

(a) Time Frames, Filing, and Service Requirements.

- (1) Notices of appeal on decisions of the magistrate judge must be filed with the clerk of court within ten (10) days after judgment and/or decision. An interlocutory appeal may be taken under Fed. R. Crim. P. 58(g)(2)(A).
- (2) The appellant's brief is due within fifteen (15) days after the filing of the notice of appeal. The original must be filed with the clerk of court and a copy served on opposing counsel.
- (3) The appellee's brief is due within fifteen (15) days after service of appellant's brief. The original must be filed with the clerk of court and a copy served on opposing counsel.
- (4) The appellant may file a reply brief within five (5) days after service of appellee's brief.

(b) Page Limitations. Briefs on appeal must not exceed twenty (20) pages except with permission of the court. Appellant reply briefs must not exceed ten (10) pages except with permission of the court.

(c) Action by the Court. All appeals from magistrate judge decisions will be decided by the court without a hearing, unless otherwise ordered by the court on its own motion or, at its discretion, upon written request of appellant.

FED. R. CRIM. P. 59
EFFECTIVE DATE

DUCrimR 59-1 EFFECTIVE DATE

These rules are effective April 1, 2005.

FED. R. CRIM. P. 60
TITLE

No corresponding local rule.